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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 OMEGA SA, et al.,

4 Plaintiffs,

5 v.

12 Civ. 6979 (PAC)

6 375 CANAL, LLC, et al.,

7 Defendants.

Trial

8 -----x
9 New York, N.Y.
February 28, 2019
9:20 a.m.

10 Before:

11 HON. PAUL A. CROTTY,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 WILMER CUTLER PICKERING HALE & DORR LLP

Attorneys for Plaintiffs

16 BY: ROBERT J. GUNTHER JR.

ISLEY MARKMAN GOSTIN

17 CHRISTOPHER R. NOYES

18 DENTONS U.S.LLP

Attorneys for Defendants

19 BY: STEPHEN G. DELLA FERA

-and-

20 TROUTMAN SANDERS LLP

21 BY: AVI SCHICK

22
23 Also Present: Sarah Finkel, Paralegal
24 Clinton Lam, Technician
25

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(Trial resumed)

THE COURT: Please be seated. My apologies. I was stuck in traffic. You've heard that before; it's true this time.

Call the jury.

MR. SCHICK: Your Honor, we don't have to do this now, but I'll start.

Ms. Caponegro is the first witness, and we have no issues with whatever's intended then, but we did get last night from the plaintiffs a long list of exhibits that they intend to use with Mr. Laboz, which includes exhibits that have already been ruled as not in evidence, new exhibits that we never saw before, and more importantly, exhibits that go far afield from the issues in this case. Before Mr. Laboz goes on in front of the jury, I would like to have a moment to discuss that with your Honor because it would be prejudicial if we have to do it ten times with each document. It doesn't have to be this minute.

THE COURT: OK.

MR. SCHICK: But all the building, the projects -- anyway, we can do it after Ms. Caponegro.

THE COURT: Let's do it after Ms. Caponegro --

MR. SCHICK: Thank you, your Honor.

THE COURT: -- when we take our early morning recess.

(Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning. My apologies. I was a
3 little bit tardy this morning. That's the reason we're late.
4 Please be seated.

5 Call your next witness, please.

6 MS. GOSTIN: Plaintiffs call Lisa Caponegro.

7 THE COURT: Ms. Caponegro.

8 LISA MARIE SILVEY,

9 called as a witness by the plaintiffs,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. GOSTIN:

13 Q. Good morning, Ms. Silvey.

14 A. Good morning.

15 Q. Just for the record, what is your maiden name?

16 A. Caponegro.

17 Q. When did your name change?

18 A. Early 2018.

19 Q. Where are you currently employed?

20 A. At Gibney Anthony & Flaherty.

21 Q. And what is your position there?

22 A. I'm a senior intellectual property paralegal.

23 Q. How long have you been an intellectual property paralegal
24 at Gibney Anthony & Flaherty?

25 A. That was my title starting in 2007, but I've worked there

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Silvey - Direct

1 since 2003.

2 Q. And what are your job responsibilities as an intellectual
3 property paralegal?

4 A. I coordinate investigations into the sale of counterfeit
5 merchandise with private investigators, with the attorneys in
6 my office. I assist with our landlord program and conduct
7 training for law enforcement around the United States.

8 Q. And you mentioned the landlord program. Can you please
9 explain what that is?

10 A. Yes. Our firm hires private investigators to go out in New
11 York City to identify locations where counterfeit goods are
12 being offered for sale, and then we -- they make evidential
13 purchases or other reports, and we follow up with letters to
14 put the landlords on notice. It also involves going out and
15 conducting civil seizures.

16 Q. And you mentioned you draft communications with landlords?

17 A. Yes.

18 Q. Can you explain what those communications are?

19 A. Basically, they notify them that either counterfeit goods
20 were observed at a location or purchased from or seized from a
21 particular location.

22 Q. And is drafting those notices an ordinary business practice
23 of Gibney Anthony & Flaherty?

24 A. Yes.

25 Q. Can you explain what type of information is generally

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1 included in those notices?

2 A. Initially, it's very basic information, the types of things
3 that I just mentioned. But upon request, we would also provide
4 any photos that we may have or copies of seizure receipts or
5 even if it did go far enough, have our investigators attend and
6 testify in a trial.

7 Q. And on what information are the notices that you're
8 drafting based?

9 A. Based on the reports that we receive back from our
10 investigators.

11 Q. And when you send those notices, do you send those via
12 regular mail or by email?

13 A. It can be both.

14 Q. And does the law firm of Gibney Anthony & Flaherty maintain
15 records in conducting the business of the law firm?

16 A. Yes.

17 Q. And as a paralegal at Gibney Anthony & Flaherty, are you
18 generally familiar with the law firm's records?

19 A. Yes.

20 Q. Plaintiffs' Exhibits 19, 23, 47 and 79 are in the binder to
21 your left. Did you review those documents in advance of your
22 testimony today?

23 A. Yes, I did.

24 Q. And what, as a general matter, are those documents?

25 A. They're letters from attorneys at my firm to either

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1 landlords or their representatives.

2 Q. And what type of information is in those notices?

3 A. Information regarding the sale of counterfeit merchandise.

4 Q. And were those documents prepared in the ordinary course of
5 Gibney Anthony & Flaherty's business?

6 A. Yes, I believe so.

7 Q. And were those documents drafted soon after the events
8 described in those documents?

9 A. Yes.

10 Q. And were those documents drafted by someone with knowledge
11 of or made with information from a person with knowledge of
12 information in those documents?

13 A. I believe so.

14 Q. Could you please turn in your binder to Plaintiffs' Exhibit
15 19?

16 A. OK.

17 MS. GOSTIN: Let's not publish this to the jury yet,
18 please.

19 Q. Can you explain what this document is, please?

20 A. This is a letter from Heather McDonald at Gibney Anthony &
21 Flaherty to Mercury Associates, care of United American Land,
22 regarding --

23 MR. DELLA FERA: Objection, your Honor. I don't think
24 it's appropriate to begin reading what the substance of the
25 letter is at this point if it's not yet in evidence.

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1 THE COURT: Sustained.

2 BY MS. GOSTIN:

3 Q. Who is Heather McDonald?

4 A. She was a partner at my firm.

5 Q. And was this letter maintained in the files of Gibney
6 Anthony & Flaherty in the ordinary course of the firm's
7 business?

8 A. Yes, it was.

9 MS. GOSTIN: Plaintiffs offer Exhibit 19.

10 MR. DELLA FERA: Objection, your Honor.

11 If I could have brief voir dire of the witness?

12 THE COURT: Yes.

13 VOIR DIRE EXAMINATION

14 BY MR. DELLA FERA:

15 Q. This letter that's in front of you, Ms. Silvey, it does not
16 include a FedEx receipt, a UPS receipt or any indication it was
17 actually sent, does it?

18 A. No.

19 Q. And you said that you believe these letters, including this
20 letter, was drafted by someone with knowledge. Do you know
21 that or do you just believe it?

22 A. I believe so, but no, I don't have direct knowledge of
23 that.

24 Q. And you have no direct knowledge of whether or not this
25 letter was actually received by the recipient, correct?

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1 A. No.

2 Q. And this letter was written by an attorney, correct?

3 A. Yes.

4 Q. An attorney who works in litigation, correct?

5 A. She no longer works there. I didn't work with her at the
6 time she was there.

7 Q. So you're not aware whether or not she worked in litigation
8 or not?

9 A. I don't believe so.

10 Q. And this letter includes, and I'm going to speak very
11 generally here, mentions --

12 THE COURT: You're going to quote from the letter not
13 in evidence?

14 MR. DELLA FERA: Sorry. You're right, your Honor.
15 Withdrawn.

16 Your Honor, I object to this letter because it is a
17 hearsay document. It was not prepared in the ordinary course
18 of business but in anticipation of litigation. The Second
19 Circuit is clear that documents made in anticipation of
20 litigation are not business records.

21 THE COURT: All right. The objection is overruled.
22 It's received in evidence. 19 is in evidence.

23 (Plaintiffs' Exhibit 19 received in evidence)

24 MS. GOSTIN: Thank you, your Honor.

25 Could we please publish this to the jury, Mr. Lam.

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1 BY MS. GOSTIN:

2 Q. Ms. Silvey, what is the date of this letter?

3 A. November 1, 2004.

4 Q. And what is the subject of this letter?

5 A. 375 Canal Street, New York, New York.

6 Q. Can you please read the first sentence of this letter,
7 starting with, "We are counsel"?

8 A. Sure. "We are counsel to Polo Ralph Lauren LP, Rolex Watch
9 U.S.A. Inc., Louis Vuitton Malletier, Coach Inc., Movado Inc.,
10 Chanel Inc., Calvin Klein Inc., Burberry Ltd., Kate Spade LLC,
11 Fendi S.L.A., Tiffany & Co. and Marc Jacobs International
12 Company LLC (hereinafter referred to as the trademark owners)."

13 Q. And now turning to the third paragraph of that letter, can
14 you please read the first sentence that starts, "This letter.

15 A. "This letter gives you formal notice that the illegal sale
16 of counterfeit merchandise during one or more of the federally
17 registered trademark of trademark owners identified herein has
18 been taking place at 375 Canal Street, New York, New York, a
19 building which you own, by tenants who presently occupy the
20 premises."

21 Q. Thank you.

22 And now turning to the second page of the letter --

23 MS. GOSTIN: Actually, we can move on from that.

24 Q. Can you please turn in your binder to PX-23?

25 A. Sure.

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Silvey - Direct

1 Q. And what, just generally, is this document?

2 A. So this is another letter that was sent by Heather McDonald
3 regarding -- looks like it's regarding a number of different
4 properties.

5 Q. And was this letter maintained in the files of Gibney
6 Anthony & Flaherty in the ordinary course of the firm's
7 business?

8 A. Yes.

9 MS. GOSTIN: Plaintiff offers Exhibit 23.

10 MR. DELLA FERA: Objection, your Honor.

11 THE COURT: Overruled. Received in evidence, 23.

12 (Plaintiffs' Exhibit 23 received in evidence)

13 MS. GOSTIN: Mr. Lam, can you please publish this to
14 the jury as well.

15 Q. Ms. Silvey, what is the date of this letter?

16 A. November 18, 2004.

17 Q. Are you looking at Exhibit 23?

18 A. Oh, I'm sorry. I was on 20. I'm on 23 now. It's February
19 22, 2005.

20 Q. And is 375 Canal in the subject of this email?

21 A. It is.

22 Q. And then scrolling down, can you read the last bullet?

23 A. "375B Canal Street, 1 Coach handbag."

24 Q. And then can you please read the fifth sentence after that?

25 A. "While we appreciate the efforts you have shown, further

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1 action needs to be taken immediately to have these tenants
2 removed."

3 Q. Thank you very much.

4 Can you now please turn in your binder to PX-47, which is
5 already in evidence.

6 A. OK.

7 MS. GOSTIN: And can we please publish this to the
8 jury.

9 Q. Can you generally explain what this document is?

10 A. This was an email chain. It looks like an email sent from
11 Sharyn Tritto to Kortny Browning, and after -- again, following
12 up on counterfeit merchandise being observed at these
13 locations.

14 Q. And again, is 375 Canal in the subject of the email?

15 A. Yes.

16 Q. And what is the date of the emails?

17 A. The first email -- they were both March 8, 2007.

18 Q. And who is Brian Brokate?

19 A. He is the head of the intellectual property department at
20 Gibney Anthony & Flaherty.

21 Q. And he's a lawyer at the firm?

22 A. Yes.

23 Q. And who was Kortny Browning?

24 A. She was a paralegal.

25 Q. Can you please read the first two sentences of

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1 Ms. Browning's email?

2 A. Yes. "Our investigators also made observations of
3 counterfeit merchandise on 1/13/07 at the following locations:
4 375A Canal Street. The outside right console openly displayed
5 100 pieces of Tiffany jewelry; a counterfeit Tiffany ring was
6 purchased from an Asian female vendor at the location."

7 Q. Thank you.

8 Could you now please turn to PX-79.

9 MS. GOSTIN: This is also already in evidence.

10 A. OK.

11 MS. GOSTIN: Could we please publish this to the jury.

12 Q. And again, could you just briefly explain what this
13 document is?

14 A. This is a letter sent by Brian Brokate to Sharyn Tritto
15 regarding counterfeiting at 375 Canal Street and another
16 location.

17 Q. And what is the date of this letter?

18 A. June 26, 2009.

19 Q. And can you please read the body of the letter?

20 A. Sure. "As you are aware, we have been notifying you of the
21 illegal counterfeiting activities occurring at your client's
22 premises since 2004. On June 24, 2009, the mayor's office of
23 special enforcement and NYPD conducted enforcement actions,
24 including nuisance abatement and court-ordered closings at
25 several locations in Chinatown. As you undoubtedly know, your

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1 client's properties at 327 Canal Street and 375 Canal Street
2 were among the buildings shut down during these actions."

3 Q. And now if you could turn to PX-87 in your binder.

4 A. OK.

5 MS. GOSTIN: Mr. Lam, this is already in evidence, so
6 we can publish this to the jury as well.

7 THE COURT: What number is this, Ms. Gostin?

8 MS. GOSTIN: It's PX-87, your Honor.

9 THE COURT: Thank you.

10 BY MS. GOSTIN:

11 Q. And again, can you just generally explain what this
12 document is?

13 A. This is another email string between Sharyn Tritto, Brian
14 Brokate and myself.

15 Q. And what are the dates of these emails?

16 A. April 14, 2011, and April 18, 2011.

17 Q. And what is the subject of the emails?

18 A. 375 Canal Street.

19 Q. Can you please read the first paragraph of your email?

20 A. Sure. "On April 6, 2011, our investigators made an
21 evidential purchase of a counterfeit Chanel necklace at 375
22 Canal Street. I have attached a declaration for your
23 reference."

24 Q. Thank you.

25 Other than the four documents we just looked at, has Gibney

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Silvey - Cross

1 Anthony & Flaherty sent other notices of counterfeiting
2 activity at 375 Canal Street?

3 A. Yes.

4 MR. DELLA FERA: Objection, your Honor.

5 THE COURT: Overruled. Notices have been sent.
6 That's in evidence.

7 Q. And approximately how many?

8 A. I would say approximately a dozen or so.

9 Q. And with regard to the notices of counterfeiting activities
10 sent by your firm since 2007, can you give a general idea of
11 what percentage dealt with the Canal Street area?

12 A. I would say the majority of them.

13 MS. GOSTIN: Thank you, Ms. Silvey. I don't have any
14 further questions.

15 THE COURT: OK. Mr. Della Fera.

16 MR. SCHICK: Steve's got me working again.

17 THE COURT: Early in the day too.

18 MR. SCHICK: I did OK yesterday so he's got me doing
19 it again.

20 MR. DELLA FERA: Take what I can, your Honor.

21 CROSS-EXAMINATION

22 BY MR. DELLA FERA:

23 Q. Good morning, Ms. Silvey.

24 A. Good morning.

25 Q. Congratulations on your marriage.

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Silvey - Cross

1 A. Thank you.

2 Q. Ms. Silvey, you reviewed a number of notices or emails sent
3 by your firm to 375 Canal LLC with Ms. Gostin, right?

4 A. Yes.

5 Q. And you just mentioned that you send notices to the Canal
6 Street area generally, correct?

7 A. Yes.

8 Q. So you don't just send them to 375 Canal LLC?

9 A. No.

10 Q. And you mentioned that you sent probably a dozen or so to
11 375 Canal LLC, correct?

12 A. Yes.

13 Q. How many would you say you send per year to landlords in
14 New York City?

15 A. I don't have a number off the top of my head.

16 Q. More than 50?

17 A. I mean, it would vary over time, and I wasn't involved in
18 this for the entire time that the program was conducted, so I
19 don't know.

20 Q. And let's take a look, then, at some of the notices that
21 you reviewed with Ms. Gostin.

22 MR. DELLA FERA: I'd like to pull up PX-23 if we
23 could, Sarah.

24 A. Which binder should I be looking at?

25 Q. You can look at either binder. I believe both -- actually,

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Silvey - Cross

1 if you could use the one I gave you, that would be a little bit
2 better.

3 A. OK.

4 Q. PX-23 is a letter sent on February 23, 2005, correct?

5 A. Yes.

6 Q. And it's sent to 375 Canal Street and some other addresses,
7 correct?

8 A. Yes.

9 Q. And this is from about 14 years ago, then, correct?

10 A. Yes.

11 Q. And this email concerns 375B Canal Street, correct?

12 A. Correct.

13 Q. Do you have an understanding of what that means, what 375B
14 is?

15 A. That the location was probably either divided up into
16 sections or possibly different storefronts or booth in the
17 location.

18 Q. And in this letter, Ms. McDonald wrote, "While we
19 appreciate the efforts you have shown, further action needs to
20 be taken immediately to have these tenants removed," correct?

21 A. Yes.

22 Q. So while Ms. McDonald wanted additional steps to be taken,
23 she also did appreciate the efforts that 375 Canal Street and
24 these other buildings had taken to date, correct?

25 A. Yes.

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Silvey - Cross

1 Q. And she didn't seem to think that they were ignoring the
2 problem, correct?

3 MS. GOSTIN: Objection.

4 THE COURT: Overruled.

5 Q. You can answer.

6 A. I don't know what she thought.

7 MR. DELLA FERA: Your Honor, I would offer Defendants'
8 Exhibit A into evidence at this point. It should be in the
9 binder, your Honor.

10 MS. GOSTIN: We have no objection.

11 THE COURT: All right. Defendants' Exhibit A is
12 received in evidence then.

13 (Defendants' Exhibit A received in evidence)

14 BY MR. DELLA FERA:

15 Q. Ms. Silvey, can you please turn to the tab in your binder
16 that says Defendants' Exhibit A, DX-A?

17 A. OK.

18 Q. Can you turn to page 3 of DX-A --

19 A. OK.

20 Q. Actually, page 4.

21 A. OK.

22 Q. What is the title of this document -- it's a little
23 faded -- if you can read it?

24 A. It's Mercury Funding L -- I guess the header is the -- it
25 says --

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Silvey - Cross

1 Q. Beneath the phone number, what is the title of this
2 document?

3 A. Five-day notice to cure.

4 Q. And if you read below that, it says 375 Canal Street,
5 correct?

6 A. Yes.

7 Q. All right. If I read the first paragraph -- it's not quite
8 so faded -- it says, "Please take notice that you are in
9 default of your obligations of your tenancy under the standard
10 form of store lease dated April 2004," correct?

11 A. Yes.

12 Q. And that's between Mercury Funding LLC and Zhong Xing
13 Trading?

14 A. Yes.

15 Q. Did you understand that Mercury Funding LLC was the entity
16 that owned 375 Canal Street at the time we looked at PX-23, at
17 the time that PX-23 was sent?

18 A. Yes.

19 Q. And do you know what a notice to cure is?

20 A. No, not really.

21 Q. Let's go down to the next sentence, the next paragraph. It
22 says, "Please take further notice that your violations of the
23 terms of the lease as well as the facts necessary to establish
24 the violations of the terms of your lease include, but are not
25 limited to, the following." And then it lists in the next few

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Silvey - Cross

1 paragraphs some potentially counterfeit merchandise that was
2 purchased at 375 Canal Street, correct?

3 A. Yes.

4 Q. All right. Let's turn to the next page of this. And then
5 it says, "Please take further notice that pursuant to paragraph
6 52 of the lease, the above default must be cured on or before
7 April 20, 2005." Correct?

8 A. Yes.

9 Q. And this was signed by a member of Mercury Funding LLC,
10 correct?

11 A. Yes.

12 Q. And this was signed on April 21, 2005, correct?

13 A. Yes.

14 Q. So about two months after the letter that was in PX-23?

15 A. Yes.

16 Q. So this document shows that following receipt of PX-23,
17 Mercury Funding LLC sent a notice to cure to the tenant of the
18 building, correct?

19 MS. GOSTIN: Objection.

20 THE COURT: Overruled.

21 Q. You can answer.

22 A. Yes.

23 Q. Let's turn to page 1 of this document. Below the phone
24 number on this document, what does it state?

25 A. Three-day notice of termination.

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Silvey - Cross

1 Q. And it's sent to Zhong Xing Trading Inc., correct?

2 A. Yes.

3 Q. Same entity that we saw on page 4, correct?

4 A. Yes.

5 Q. And it says, "Please take notice that the undersigned
6 hereby elects to terminate your tenancy at the above-referenced
7 premises effective May 18, 2005." Correct?

8 A. Yes.

9 Q. And if you take a look at the "please take further notice"
10 paragraph, they did so because the lease prohibits counterfeit
11 merchandise from being sold, correct?

12 A. Yes.

13 Q. And despite the notice to cure that we saw just a minute
14 ago, an additional counterfeit piece of merchandise apparently
15 seems to have been bought at this location, correct?

16 A. Yes.

17 Q. So in response, this document was sent terminating the
18 lease, correct?

19 A. I guess -- it appears so.

20 Q. And let's turn to the next page of this document. This was
21 sent on May 12, 2005, correct?

22 A. Yes.

23 Q. And it's signed, again, by a member of Mercury Funding LLC?

24 A. Yes.

25 Q. So the entity that owned 375 Canal Street, after having

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Silvey - Cross

1 received notice from your firm, sent a notice to cure, correct?

2 A. Yes.

3 Q. And then after the notice of cure wasn't effective, they
4 sent a notice of termination, correct?

5 A. Yes.

6 Q. And they attempted to terminate the lease?

7 A. Yes.

8 Q. Because the tenant was selling counterfeit goods?

9 A. Yes.

10 Q. Let's move to PX-44, another document that I believe you
11 reviewed with Ms. Gostin. And PX-44 is from December 19, 2006,
12 correct?

13 A. Yes.

14 Q. The top email in the chain?

15 A. Yes.

16 Q. And the bottom email in the chain is from December 4, 2006?

17 A. Correct.

18 Q. And so this is about a year and a half after the notice to
19 cure we saw and the notice of termination in the previous
20 exhibits?

21 A. Yes.

22 Q. And I'd like to direct you to the email from Ms. Tritto in
23 the middle of the page that's dated December 4, 2006. Do you
24 see that?

25 A. I do.

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Silvey - Cross

1 Q. And if you look at the paragraph below the list of
2 addresses, do you see the third sentence in that paragraph that
3 starts with "I was also"?

4 A. Yes.

5 Q. And that sentence says, "I was also in court with the
6 tenant in 375 Canal Street."

7 A. Yes.

8 Q. So this letter or this email indicates that Ms. Tritto was
9 in court with the tenant 375 Canal Street?

10 A. Yes.

11 Q. Do you know why she would be in court?

12 A. I didn't --

13 MS. GOSTIN: Objection.

14 THE COURT: If she knows why she can say. Objection's
15 overruled.

16 MR. DELLA FERA: Thank you.

17 THE COURT: Do you know why?

18 THE WITNESS: I do not know.

19 BY MR. DELLA FERA:

20 Q. Is it possible she was in court to remove the tenant?

21 MS. GOSTIN: Objection.

22 Q. If you know.

23 THE COURT: Sustained.

24 Q. Let's look at page 2 of PX-44. This is a receipt that you
25 attached from an apparent purchase made at 375 -- your firm,

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1 excuse me. This is a receipt that your firm attached from the
2 apparent purchase made at 375 Canal Street in December 2006,
3 correct?

4 A. Yes.

5 Q. And this receipt was completed by an investigator your firm
6 hired, correct?

7 A. Yes.

8 Q. And if you look at the top of this document, it says that
9 the address is 375A Canal Street, correct?

10 A. Yes.

11 Q. So that's, again, we talked about 375B a minute ago, and
12 that might be one subunit of the location --

13 MS. GOSTIN: Objection.

14 Q. -- correct?

15 A. Yes.

16 Q. And 375A might be another subunit of the location?

17 A. It might be, yes.

18 Q. And I'd like you to look right above the address at 375A.
19 Do you see where there's an M listed on the left?

20 A. Yes.

21 Q. And it says outside stand?

22 A. Yes.

23 Q. Now, do you have any personal knowledge about this
24 investigation?

25 A. I do not.

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Silvey - Cross

1 Q. You didn't go on it?

2 A. No.

3 Q. But the investigator wrote outside stand, correct?

4 A. Yes.

5 Q. Have you seen counterfeit goods sold on -- goods of any
6 type in New York sold on tables in the street?

7 A. I have.

8 Q. Could it be possible that the outside stand listed here is
9 one such table?

10 A. I don't know.

11 MR. DELLA FERA: Let's move to PX-47 now.

12 Q. PX-47 is another email that you reviewed with Ms. Gostin,
13 correct?

14 A. Yes.

15 Q. All right. And again, this is an email chain from about 12
16 years ago, March of 2007, correct?

17 A. Correct.

18 Q. And this is a few months after that December 2006 email we
19 were just looking at, correct?

20 A. Yes.

21 Q. All right. And Ms. Gostin had you look that there was a
22 notice of, again, outside -- the outside right console was
23 displaying a hundred pieces of Tiffany jewelry, correct?

24 A. Yes.

25 Q. And that's at that 375A unit again, correct?

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Silvey - Cross

1 A. Yes, that's what it says here.

2 Q. And at the top of the document, there's an email from
3 Ms. Tritto, March 8, 2007, right?

4 A. Yes.

5 Q. And that email says, "The lease for 375A expires at the end
6 of this month. I will be seeking possession." Correct?

7 A. Yes.

8 Q. Let's see if Ms. Tritto followed through.

9 MR. DELLA FERA: Can we pull up Defendants' Exhibit J,
10 please.

11 Q. You can turn to that in your binder.

12 A. I found it.

13 MR. DELLA FERA: Defendants' Exhibit J is in evidence,
14 your Honor.

15 THE COURT: Pardon me?

16 MR. DELLA FERA: Defendants' Exhibit J is already in
17 evidence.

18 THE COURT: Yes, I understand.

19 BY MR. DELLA FERA:

20 Q. Ms. Silvey, can you read the top of this document?

21 A. It's a surrender agreement.

22 Q. And the date of this document?

23 A. 4/17/07.

24 Q. And the landlord?

25 A. 375 Canal LLC.

J2sWome1

Silvey - Cross

1 Q. And this says that the description of leased premises is
2 corner store premises?

3 A. Yes.

4 Q. At 375 Canal Street, correct?

5 A. Yes.

6 Q. You're not sure whether that's 375A or 375B, are you?

7 A. No.

8 Q. But Ms. Tritto did say that she'd be seeking possession
9 because the lease ended at the end of the month for the tenant
10 at 375A, correct?

11 A. Yes, that's right.

12 Q. And if you look at the bottom or at the middle of this
13 document, that says surrender in the middle, correct?

14 A. Yes.

15 Q. It says: "Tenant gives possession of the leased premises
16 and the keys to the landlord. The landlord accepts the keys
17 and possession of the leased premises in the condition
18 delivered." Is that right?

19 A. Yes.

20 Q. And this document was signed, it appears, by the
21 landlord -- that is, 375 Canal LLC -- at the bottom?

22 A. Yes.

23 Q. So this document shows that 375 Canal LLC did seek
24 possession from the tenant as Ms. Tritto stated in her March
25 2007 email, correct?

J2sWome1

Silvey - Cross

1 A. Yes.

2 Q. And so this email shows that Ms. Tritto followed through
3 with you, with your firm about what she said she would do,
4 correct?

5 A. Yes, that's what it says.

6 Q. She was good to her word?

7 A. I --

8 Q. From what this document's showing?

9 A. From what I see, I suppose so.

10 Q. And so let's look at PX-87, which I believe is the final
11 document that you reviewed with Ms. Gostin.

12 MR. DELLA FERA: Actually, can we go back to PX-47.
13 There's one final issue on PX-47.

14 Q. I apologize.

15 A. That's OK.

16 Q. Do you see at the top of this email, on PX-47, the third
17 sentence, "Please provide seizure vouchers if you have them"?

18 A. Yes.

19 Q. And then, "I will serve appropriate notices and keep you
20 advised"?

21 A. I see that.

22 Q. Do you know why Ms. Tritto would ask for seizure vouchers?

23 A. I would imagine just for further proof or evidence of what
24 we sent her previously.

25 Q. If you know, can a landlord evict a tenant without some

J2sWome1

Silvey - Cross

1 sort of evidence like that?

2 A. I don't know.

3 MR. DELLA FERA: Let's now turn to PX-87.

4 Q. And looking at PX-87, you focus on an email from

5 Ms. Tritto -- to Ms. Tritto from you saying that there had been
6 a purchase of a Chanel necklace at 375 Canal Street, correct?

7 A. Yes.

8 Q. And in response, Ms. Tritto says that she was informed that
9 the offending subtenant was removed, correct?

10 A. Yes.

11 Q. Do you understand what a subtenant is?

12 A. Yes, it was -- well, I imagine if we're saying the space
13 was divided up into different booths or sections, it was
14 someone in one of those sections.

15 Q. Wouldn't a tenant be the person who leases directly from
16 the landlord?

17 A. Yes.

18 Q. And wouldn't a subtenant be somebody who then leases from
19 the tenant?

20 A. I don't know exactly how it works, but that would be my
21 understanding.

22 Q. OK. And when she said that the offending subtenant had
23 surrendered, did you follow up on that?

24 A. I don't remember.

25 Q. Did Ms. Gostin show you any email where you said that's not

J2sWome1

Silvey - Cross

1 good enough, we need the tenant to be removed?

2 A. I don't recall.

3 Q. You don't recall if she showed you an email? I'm asking if
4 Ms. Gostin showed you an email indicating that you felt that
5 additional action needed to be taken against the tenant. I'm
6 talking about what she showed you this morning.

7 THE COURT: I don't understand the question.

8 Q. Did Ms. Gostin show you any document after this document
9 showing that you followed up with Ms. Tritto?

10 A. I don't think so.

11 Q. OK. Let's go back to this document and look at the -- and
12 again, if you look at your email, you said that you have
13 attached a declaration for your reference, correct?

14 A. Yes.

15 Q. Let's look at that declaration. Turn to page 3. Do you
16 see paragraph 3 of this declaration?

17 A. Yes.

18 Q. And it says, in sum and substance, that a necklace was
19 purchased from an Asian female vendor, correct?

20 A. Yes.

21 Q. It doesn't say a man of Middle Eastern descent?

22 A. No, it does not.

23 Q. Or a man of Indian descent?

24 A. It does not say that.

25 Q. And if we go back to the first page of this document,

J2sWome1

Silvey - Cross

1 again, it says that the offending subtenant has surrendered,
2 correct?

3 A. Yes.

4 Q. And that subtenant was likely this Asian female vendor?

5 A. Yes.

6 MR. DELLA FERA: Nothing further, your Honor.

7 MS. GOSTIN: We have no further questions.

8 THE COURT: Ms. Silvey, you're excused. Thank you
9 very much.

10 THE WITNESS: Thank you.

11 (Witness excused)

12 MR. GUNTHER: Your Honor, our next witness is going to
13 be Albert Laboz.

14 THE COURT: OK. We're going to take a short recess.
15 There's a legal matter we have to inquire into. It'll take
16 about ten minutes.

17 (Continued on next page)

J2sWome1

(Jury not present)

THE COURT: OK, Mr. Schick.

MR. SCHICK: Thank you, your Honor.

What we received last night from plaintiffs' counsel indicates that what they intend to do with Mr. Laboz is extraordinarily far afield from what the judge has ruled is relevant and in many cases admissible in this trial. For example, they sent a new exhibit last night.

Your Honor made a ruling in 2017 with respect to documents that plaintiffs' prior counsel wanted to put in that may have shown Laboz family wealth and the like. Your Honor made specific rulings about documents, and last night they sent us Exhibit 292, never been produced before, never been on any exhibit list before, which shows, "Development dreams, Laboz family has amassed \$76 million of property on Downtown Brooklyn block," entirely irrelevant to this case, obviously, not in any exhibit list.

THE COURT: What's the next one?

MR. SCHICK: Then, your Honor, they have well over a dozen exhibits that are solely related to other buildings, picture after picture of buildings that are not 375 Canal Street, that have no relevance to this case.

I know your Honor has let in specific letters that have, you know, some reference to one or more buildings as long as we focus on the buildings, but they have document after

J2sWome1

1 document. Your Honor made a ruling at -- before opening with
2 respect to certain documents they wanted to put in about United
3 American Land and all its holdings. Your Honor said they could
4 not use that, and yet here it is as an exhibit.

5 Your Honor made a ruling yesterday with Mr. Taute
6 about an email about the Swatch seizure in 2012, and yet it is
7 last night sent to us as an exhibit when your Honor sustained
8 the objection, and now there's certainly no basis for it.

9 This is solely -- and one more thing, your Honor.
10 There's exhibit after exhibit in this book like that.

11 And then one final point, your Honor, which is -- two
12 final points, please.

13 One, again, they clearly are trying to go to the fact
14 that Mr. Laboz has some means. They have, for example, the
15 mortgage of this property. There is no dispute that Mr. Laboz,
16 375 Canal owns the property and the Laboz family are members,
17 but the only purpose to put in a mortgage is to show some value
18 of the property. Your Honor made a ruling with respect to
19 actual damages and your Honor has his jury instruction, which
20 both sides have to live with -- right -- which is we're not
21 going to show how many billions Omega has and the fact that it
22 had zero actual damages here and they're not going to show the
23 Laboz family is rich, so therefore, goes left. And we've kept
24 our end of that bargain.

25 The last, final point, your Honor, is your Honor

J2sWome1

1 admitted three settlement agreements with the city and the
2 Louis Vuitton settlement. And that's all in, and we have
3 haven't tried to reargue that. Now they want to put in a
4 settlement agreement about a different building, your Honor,
5 415 Broadway. Your Honor made a ruling about other buildings.
6 In any event, your Honor also said even with respect to 375
7 Canal, three settlements with the city, Louis Vuitton, we've
8 lived with that, and now with the last witness they just want
9 to take this entire case in an entirely different,
10 inappropriate and irrelevant direction.

11 THE COURT: Mr. Gunther.

12 MR. GUNTHER: Yes, your Honor.

13 Your Honor, first of all, we put a bunch of exhibits
14 in the binder to make sure that we had what we might use with
15 this witness. But let me be very clear. In terms of my
16 cross-examination of Mr. Laboz, to the extent I'm talking about
17 counterfeiting activity, I'm going to focus my questions on
18 what was going on at 375 Canal Street. That's point one.

19 Point two, I am going to ask him questions about other
20 buildings that they own, that he and his brothers own. I'm
21 entitled to do that because, and your instructions make this
22 clear, your Honor, it goes directly to the issue of the amount
23 of statutory damages.

24 THE COURT: How does that deal with statutory damages?

25 MR. GUNTHER: Your Honor, two ways.

J2sWome1

1 The amount of statutory damages has to have the
2 potential for discouraging the defendant; that's 375 Canal
3 Street, owned by the Laboz brothers. And No. 4 in the list, in
4 your jury instruction, is the deterrent effect on others
5 besides the defendant. So to the extent that they're arguing
6 that 375 Canal Street is all by itself and the Laboz brothers
7 should not be looked at beyond that, I'm entitled to show that
8 they own, through common ownership, a number of other buildings
9 in the Canal Street area; and that in terms of deterring them,
10 your Honor, it's important for the jury to consider that they
11 have other buildings in the Canal Street area besides 375 Canal
12 Street.

13 When Mr. Noyes opened, and your Honor allowed him to
14 do this, we put up a demonstrative exhibit that showed the
15 other buildings owned by the Laboz brothers in the Canal Street
16 area. I'm not going to ask him about counterfeiting activity
17 at those locations, but it is important for the jury to
18 understand that these three brothers own a number of properties
19 down there and that, in assessing the amount of statutory
20 damages in this case, they should assess -- they should think
21 about and keep in mind -- how are they going to discourage this
22 defendant as well as others from doing what we think is
23 improper counterfeiting, a haven for counterfeiting activity?

24 So, your Honor, I'm being very specific.

25 THE COURT: What about the references to his wealth?

J2sWome1

1 MR. GUNTHER: Your Honor, I'm not going to ask him
2 about his wealth. I wasn't planning to. The document in there
3 is just to show that they own -- I'm going to ask him about how
4 many buildings they own in the New York area.

5 THE COURT: Mr. Schick.

6 MR. SCHICK: Your Honor, I was not allowed to ask
7 Mr. Foster how many billions of dollars Omega has in sales, how
8 Omega sales went up every year, how they have no actual
9 damages.

10 Now, actual damages are a factor in statutory damages.
11 It's included in the jury instruction. I was prohibited from
12 pointing out that they're at zero. Everything -- with respect
13 to the exhibit, the demonstrative, they argued then it's for
14 general background, and your Honor let it in. They put in so
15 many letters with respect to 375 Canal with other addresses,
16 and your Honor let it in.

17 THE COURT: How could I keep it out?

18 MR. SCHICK: OK.

19 THE COURT: I'm trying to be practical here.

20 MR. SCHICK: Well, they picked the ones that have
21 other addresses.

22 MR. GUNTHER: That's just not right.

23 MR. SCHICK: The point has been made, your Honor. I
24 must then be able to say Omega had no damages. It's an
25 admission they made in open court. Your Honor can say the

J2sWome1

1 instructions say that that's not the only factor, but they're
2 not letting me say that, your Honor. You didn't let me ask Mr.
3 Foster that. You didn't let me ask anybody that.

4 And now they want to say -- if they want to ask the
5 general question, Did you own a few buildings, the jury has got
6 that already, obviously. If he wants to ask a general
7 question, your Honor can ask the general question, Do you own a
8 half a dozen buildings? He can do that, but this is what their
9 whole testimony is, picture after picture. He's admitted it's
10 about wealth. All it is is about send a message.

11 THE COURT: Mr. Gunther represents that he's not going
12 to ask him about wealth.

13 MR. GUNTHER: I just said that, your Honor. And you
14 know something? I think, your Honor, one of the things you can
15 count on me for is that when I make a representation to you,
16 I'm going to stick by it.

17 MR. SCHICK: Your Honor, if you ask somebody in New
18 York, How many cars do you own and they say 20, you've asked
19 them about their wealth. If you ask them about how many
20 buildings you own, you've asked that. Now he's saying he's
21 going to ask him totally how many buildings he owns. It's far
22 afield, your Honor. It's totally far afield.

23 THE COURT: All right. I've heard enough.

24 You're not going to ask him about wealth.

25 MR. GUNTHER: Your Honor, I represent to you I will

J2sWome1

1 not ask him a question about his wealth.

2 THE COURT: Or his family's wealth.

3 MR. GUNTHER: Or his family's wealth.

4 THE COURT: Or the company's wealth.

5 MR. GUNTHER: Or the company's wealth.

6 MR. SCHICK: Your Honor, he should be limited to the
7 demonstrative he said shows half a dozen buildings. If he
8 wants him to say, We own those buildings, your Honor, that's
9 fine. He wants to go far afield with that, with the whole
10 United American Land. It's inappropriate, your Honor. It's no
11 different than actual damages.

12 THE COURT: OK. The rule is no wealth.

13 MR. SCHICK: And your Honor, there's one final issue,
14 415B, the settlement on the other building. I raised the issue
15 with the settlement on the other building.

16 MR. GUNTHER: Your Honor, I really wish Mr. Schick
17 would listen when I talk. I represented to you that the only
18 examination I'm going to do with respect to counterfeiting
19 activities is at 375 Canal Street. I've made that
20 representation to you, and I intend to stick to it.

21 THE COURT: Call the jury, please.

22 (Continued on next page)

J2sWome1

Laboz - Direct

1 (Jury present)

2 THE COURT: Please be seated.

3 Call your next witness.

4 MR. GUNTHER: Your Honor, we call Mr. Albert Laboz.

5 ALBERT LABOZ,

6 called as a witness by the plaintiffs,

7 having been duly sworn, testified as follows:

8 THE COURT: Mr. Gunther.

9 MR. GUNTHER: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MR. GUNTHER:

12 Q. Good morning, Mr. Laboz.

13 A. Good morning.

14 Q. Can you tell the jury what your occupation is?

15 A. I'm a real estate owner and manager.

16 Q. OK. And do you own real estate in the Manhattan area?

17 A. Yes.

18 Q. And in the New York City area in general?

19 A. Yes.

20 Q. Now, sir, you're a lawyer, am I correct?

21 A. Yes.

22 Q. How long have you been a lawyer?

23 A. Since '85.

24 Q. OK. Sir, have you ever practiced law?

25 A. No.

J2sWome1

Laboz - Direct

1 Q. OK. Now, sir, are you familiar with a company called 375
2 Canal Street LLC?

3 A. Yes.

4 Q. And sir, that is a limited liability company, correct?

5 A. Correct.

6 Q. That's what LLC stands for?

7 A. Yes.

8 Q. And sir, the members of 375 Canal Street LLC are you and
9 your brothers Jason Laboz and Jody Laboz, correct?

10 A. That's correct.

11 Q. And apart from your brothers, you and your brothers, no one
12 else makes any decisions in connection with the affairs of 375
13 Canal Street, isn't that right?

14 A. Correct.

15 Q. Now, your understanding, sir, is that 375 Canal Street is
16 the defendant in this case, correct?

17 A. Correct.

18 Q. And 375 Canal Street currently owns the building located
19 at -- sorry. 375 Canal LLC currently owns the building located
20 at 375 Canal Street, right?

21 A. Yes.

22 Q. And it owns the storefront that is 375A Canal Street,
23 right?

24 A. Yes.

25 Q. And it owns the storefront that is 375B Canal Street,

J2sWome1

Laboz - Direct

1 right?

2 A. Yes.

3 Q. And it has owned the entire building, including both of
4 those storefronts, since 2005, correct?

5 A. That's right.

6 Q. And the building is on the corner of Canal Street and West
7 Broadway, right?

8 A. Yes.

9 Q. It's a four-story building with retail stores on the ground
10 floor, right?

11 A. Yes.

12 Q. And it has retail storefronts both on the Canal Street side
13 and on the West Broadway side, right?

14 A. Yes.

15 Q. And the address of the West Broadway-facing storefront is
16 301 Canal Street, correct?

17 A. That's right.

18 Q. Now, 375 Canal Street LLC purchased the property located at
19 375 Canal Street from an entity known as Mercury Funding LLC,
20 right?

21 A. Yes.

22 Q. And Mercury Funding LLC was also owned by you and your two
23 brothers, correct?

24 A. Correct.

25 I want to correct something. I'm not sure if it was a

J2sWome1

Laboz - Direct

1 purchase. It was just an internal transfer.

2 Q. An internal transfer?

3 A. Yes.

4 Q. OK. And sir, that occurred in 2005?

5 A. Yes, I believe so.

6 Q. OK. Now, sir, you and your brothers are principals in
7 another entity called United American Land LLC, correct?

8 A. Yes.

9 Q. I'd like to take a look, if I can, at -- and I'm going to
10 ask you --

11 MR. GUNTHER: Have we handed up the binders? OK.

12 Q. There should be a binder in front of you on the witness
13 stand to your left, and if you look at Plaintiffs' Exhibit
14 219 --

15 A. Yes.

16 Q. Sir, is that a printout of a portion of the United American
17 Land LLC website?

18 A. Yes.

19 MR. GUNTHER: Your Honor, I offer Plaintiffs' Exhibit
20 219.

21 MR. SCHICK: Your Honor, it's not relevant. He's
22 obviously testified that, you know, he has relationship there,
23 but it's really not relevant and taking us far afield, I feel,
24 your Honor. I see the next ones in the book. You can page
25 through the book, your Honor.

J2sWome1

Laboz - Direct

1 THE COURT: This is all background information. The
2 objection is overruled.

3 (Plaintiffs' Exhibit 219 received in evidence)

4 MR. GUNTHER: Thank you, your Honor.

5 With 219 now in evidence, I'll put it up on the
6 screen, and can we blow up the paragraph at the top.

7 Q. Can you see that on the screen, sir?

8 A. No.

9 MR. GUNTHER: All right. Hang on.

10 Does the jury have it? Thank you.

11 Q. I want to make sure you have it, sir. You could look at it
12 in the book.

13 A. OK.

14 Q. It's Plaintiffs' Exhibit 219, and it's on the first page
15 and it's the first paragraph under United American Land. Do
16 you see that?

17 A. Correct.

18 Q. And it says, "United American Land LLC (UAL) is a
19 family-owned real estate development, investment and management
20 company based in New York City. Its principals, the brothers
21 Albert, Jason and Jody Laboz, own and manage almost 50
22 properties in Manhattan, Brooklyn and Queens." Do you see
23 that?

24 A. Yes.

25 Q. And sir, that's an accurate statement, correct?

J2sWome1

Laboz - Direct

1 A. Yes.

2 Q. OK. Sir, you and your brothers run your business as
3 landlords of these various buildings under the name United
4 American Land LLC, right?

5 A. Well, United American Land is really the management
6 company.

7 Q. OK. And one of the properties that United American Land
8 manages is the property at 375 Canal Street, right?

9 A. That's right.

10 Q. Now, sir, I'd like to show you what's been marked, and it
11 should be in your binder, as 222.

12 A. Two -- I'm sorry?

13 Q. 222, PX-222.

14 A. OK.

15 Q. Sir, this is a printout of another portion of the United
16 American Land website, correct?

17 A. Correct.

18 MR. GUNTHER: Your Honor, I offer Plaintiffs' Exhibit
19 222.

20 MR. SCHICK: Your Honor, we object.

21 THE COURT: Sustained.

22 BY MR. GUNTHER:

23 Q. Now, is it fair to say, sir, that of the buildings that you
24 own a number of them have retail space as well as other space?

25 A. Yes.

J2sWome1

Laboz - Direct

1 Q. Would you say that the majority have retail space?

2 A. Mostly.

3 Q. OK. So of the 50 buildings you own, most of them have
4 retail space in them?

5 A. Correct.

6 Q. Now, sir, are you aware that during at least the period
7 2004 to 2012, the sales of counterfeit goods were a problem in
8 the Canal Street area?

9 A. Yes.

10 Q. And sir, you know that the sale or offer for sale of
11 counterfeit goods is wrong, correct?

12 A. Absolutely.

13 Q. And you know it's a crime, it's actually a crime in New
14 York, correct?

15 A. Yes.

16 Q. To sell --

17 A. Yes.

18 Q. -- or offer to sell counterfeit goods?

19 A. Yes, and we take it seriously.

20 Q. And sir, you know that it's wrong for tenants in one of
21 your buildings to sell or offer for sale counterfeit goods,
22 right?

23 A. Absolutely.

24 Q. Now, sir, I'd like to ask you to take a look at --

25 Well, let me ask you this. Sir, 375 Canal LLC has been a

J2sWome1

Laboz - Direct

1 defendant in at least three lawsuits brought by the city of New
2 York, right?

3 A. I think so.

4 Q. All right. So in 2004, 375 Canal was owned -- Canal Street
5 was owned by Mercury Associates, right?

6 A. Yes.

7 Q. And that was the company that you and your brothers
8 controlled, correct?

9 A. Correct.

10 Q. And when it was transferred in 2005, it was the internal
11 transfer to 375 Canal, also controlled by you and your
12 brothers, right?

13 A. Yes.

14 Q. OK. So your family owned or really controlled Mercury
15 Associates in 2004, right?

16 A. Correct.

17 Q. In 2004, the city of New York commenced an action against
18 Mercury Associates and the occupants of 375 Canal Street
19 relating to counterfeiting activity at 375 Canal Street, right?

20 A. I believe so.

21 Q. Sir, let me show you Plaintiffs' Exhibit 137 in evidence,
22 and I'll put up the first page, and hopefully -- is it on the
23 screen for you, sir, or do you have to --

24 A. No screen.

25 MR. GUNTHER: No screen. Is there a way to just check

J2sWome1

Laboz - Direct

1 the monitor for him?

2 THE COURT: I can't check the monitor.

3 MR. GUNTHER: Your Honor, that's fine. I apologize.

4 I'll keep going.

5 THE COURT: The old-fashioned way is the best way.

6 MR. GUNTHER: Mr. Gonzalez can check the monitor.

7 THE WITNESS: It went on for a second.

8 There you go.

9 MR. GUNTHER: You got it?

10 Thank you, Mr. Gonzalez.

11 THE COURT: He shook the screen and it turned on.

12 It's a function of turning it on and off.

13 MR. GUNTHER: Turning it on and turning it off, right.

14 Thank you, your Honor.

15 THE COURT: Mr. Laboz has a screen now.

16 MR. GUNTHER: OK. Great.

17 If we could turn to the second page of Plaintiffs'
18 Exhibit 137 and -- actually, go to the third page. I'm sorry.
19 And if we could blow up the caption.

20 Q. Now, sir, this is actually -- this is the city of New York,
21 and this is the caption of the lawsuit in 2004 relating to the
22 city of New York suing Mercury Associates and 375 Canal Street
23 for counterfeiting activity, correct?

24 A. Correct.

25 MR. SCHICK: I object, your Honor. I think it's an 05

J2sWome1

Laboz - Direct

1 index number. I just want to clarify for a second. Looks like
2 05.

3 MR. GUNTHER: The settlement was filed in October.
4 There's a stamp right on the front, October 26, 2005, right?

5 THE COURT: Correct.

6 BY MR. GUNTHER:

7 Q. Now, sir, this was a stipulation that 375 Canal LLC entered
8 into -- sorry, Mercury Associates, not 375 Canal -- mercury
9 Associates entered into with the city of New York to settle
10 that action, right?

11 A. Yes.

12 Q. Sir, you were represented by counsel in connection with
13 that settlement, right?

14 A. Yes.

15 Q. And that counsel was Sharyn Tritto?

16 A. Yes.

17 Q. And sir, as part of that settlement --

18 MR. GUNTHER: And I'd like to look at paragraph 3 of
19 the settlement if we can, and we're putting that up.

20 Q. As part of that settlement, Mercury Associates agreed that
21 the premises located, and then there's a listing, "the land and
22 building known as 375 Canal Street will be permanently enjoined
23 as a place where the sale and/or possession of trademark
24 counterfeit merchandise occurs." Do you see that?

25 A. Correct.

J2sWome1

Laboz - Direct

1 Q. You agreed to that, correct?

2 A. Correct.

3 Q. And you agreed to that injunction, correct?

4 A. Yes.

5 MR. GUNTHER: All right. Now I'd like to go to
6 Plaintiffs' Exhibit 140, which is also in evidence, and if we
7 could put that up.

8 Q. In 2006, the city of New York again sued 375 Canal Street,
9 and now the defendant was 375 Canal, which had purchased the
10 building in 2005, right?

11 A. Again, you used the word "purchased."

12 Q. It had transferred?

13 A. Yes.

14 Q. I apologize.

15 A. Don't apologize.

16 Q. Transferred?

17 A. Yes.

18 Q. With that correction, is the answer to my question yes?

19 A. Yes.

20 Q. So the lawsuit in 2006 was the city of New York suing 375
21 Canal LLC as well as the land and building known as 375 Canal
22 Street, right?

23 A. Correct.

24 Q. And once again, this action related to counterfeiting of
25 goods either being sold or offered for sale at 375 Canal

J2sWome1

Laboz - Direct

1 Street, right?

2 A. Yes.

3 Q. And sir, 375 Canal Street settled that lawsuit; in fact,
4 this document, Plaintiffs' Exhibit 140, is the stipulation of
5 that settlement, right?

6 A. Yes.

7 Q. And again, you were represented by counsel in connection
8 with that settlement, right?

9 A. Yes.

10 Q. Ms. Tritto?

11 A. Yes.

12 MR. GUNTHER: If we could again turn to paragraph 3
13 and put that up.

14 Q. Sir, again, you, as the owners of 375 Canal Street LLC,
15 agreed that "the land and building known as 375 Canal Street
16 will be permanently enjoined as a place where the sale and/or
17 possession of trademark counterfeit merchandise or pirated
18 merchandise occurs," correct?

19 A. Correct.

20 Q. You agreed to that, right?

21 A. Yes.

22 Q. You agreed to that injunction; that was part of the
23 stipulation and settlement, right?

24 A. Well, I agreed to use everything in my power to stop it.

25 Q. OK. Everything in your power?

J2sWome1

Laboz - Direct

1 A. Yes.

2 Q. Everything in your power?

3 A. As my landlord, yes.

4 Q. Now, sir, I want to show you what's been marked and is in
5 evidence as Plaintiffs' Exhibit 147.

6 MR. GUNTHER: And let's go to the third -- the
7 second -- that's the page. I'm sorry.

8 Q. Sir, again, for a third time, in 2009, the city of New York
9 again sued 375 Canal LLC and the land and building at 375 Canal
10 Street for counterfeiting activity that was going on in those
11 premises, right?

12 A. Correct.

13 Q. And once again, 375 Canal LLC, owned by you and your two
14 brothers, settled with the city of New York, correct?

15 A. Correct.

16 Q. And again, you were represented by counsel?

17 A. Yes.

18 Q. Right?

19 A. Yes.

20 Q. Ms. Tritto, right?

21 A. Yes.

22 Q. Sir, let's go to paragraph 4 of that stipulation of
23 settlement. And it says, "Defendant 375 Canal, without
24 admitting any knowledge of the underlying allegations in the
25 complaint, consents that it, its agents, assigns, employees,

J2sWome1

Laboz - Direct

1 patrons and/or representatives shall be permanently and
2 perpetually" --

3 What does perpetually mean? That means forever, right?

4 A. Right.

5 Q. "-- enjoined from violating either New York State penal
6 laws or the parameters enumerated in Section 7-703 of Title 7
7 of the New York City Administrative Code within the premises."
8 Do you see that?

9 A. Yes.

10 Well, we didn't violate the penal law.

11 Q. Sir, I didn't ask you that. I just asked you what it says,
12 right?

13 A. Yes.

14 Q. So you agreed and consented to that injunction, correct?

15 A. Yes.

16 Q. In perpetuity, correct?

17 A. Yes.

18 MR. GUNTHER: Now, let's turn to paragraph 8 of the
19 stipulation of settlement and we're getting that.

20 Q. Now, in the stipulation of settlement, paragraph 8 reads as
21 follows: "375 Canal and the subsequent tenant shall dismantle
22 and remove all hidden storage facilities/structures inside the
23 premises to allow open access to all areas within the
24 storefront." Do you see that?

25 A. Yes.

J2sWome1

Laboz - Direct

1 Q. And it says, "Said defendant further agrees that prior to
2 the premises being reopened for lawful business operations,
3 plaintiff's representative shall be permitted entry to conduct
4 a walk-through to ensure compliance with this provision." Do
5 you see that?

6 A. Yes.

7 Q. And it says, "Should the walk-through demonstrate that the
8 premises has not been satisfactorily dismantled, the location
9 will not be reopened for lawful business operations pending
10 compliance with this paragraph." Do you see that?

11 A. Yes.

12 Q. And you agreed to that, right?

13 A. Yes.

14 Q. You agreed to take those steps, right?

15 A. Yes.

16 MR. GUNTHER: Let's go to paragraph 12.

17 Q. Paragraph 12 says that "375 Canal shall have professional
18 course of conduct signs posted throughout the premises. Said
19 signs shall inform patrons that the sale and/or possession of
20 either pirated or trademark counterfeit merchandise will not be
21 tolerated and may result in their arrest." Do you see that?

22 A. Yes.

23 Q. "Said signs shall be visible at all times and are to be
24 posted on or before August 15, 2009." Do you see that?

25 A. Yes.

J2sWome1

Laboz - Direct

1 Q. And then it talks about failure to comply with the
2 provision. Do you see that?

3 A. Yes.

4 Q. OK. And it talks about a two-year period, correct?

5 A. Yes.

6 Q. All right. So 375 Canal LLC agreed to make sure that those
7 signs were put up warning about counterfeiting activity and the
8 penalties therefor as part of this settlement," correct?

9 A. Correct.

10 Q. Now, sir, I'd like to show you Plaintiffs' Exhibit 106 in
11 evidence.

12 MR. GUNTHER: Could we put that up.

13 Q. Now, sir, there's been evidence in this case that this is a
14 photograph that was taken in December of 2010. My question is,
15 sir, do you recognize this as the storefront at 375B Canal
16 Street?

17 MR. SCHICK: Your Honor, I object not to the question
18 he asked but to the prior characterization of disputed and
19 unfounded testimony. But the question of what he recognizes I
20 have no objection to.

21 THE COURT: OK. Thanks for the observation.

22 MR. GUNTHER: Your Honor, I'm not quite sure what the
23 observation had to do with this case.

24 THE COURT: Yes.

25 BY MR. GUNTHER:

J2sWome1

Laboz - Direct

1 Q. Sir, do you recognize that to be the premises at 375B Canal
2 Street?

3 A. Yes.

4 Q. Now, sir, assuming that this photograph was taken in
5 December 2010, do you see any signs warning, related to
6 counterfeiting, anticounterfeiting activity?

7 A. No, I don't.

8 Q. OK.

9 A. But we did put up the signs.

10 Q. Sir, are there any signs there? It's 2010.

11 A. No.

12 Q. Was that within the two-year period of the stipulation of
13 settlement?

14 A. Yes.

15 Q. Do you see any signs there?

16 A. I answered it. I didn't see a sign, no.

17 MR. GUNTHER: OK. Let's take a look at the next
18 exhibit, which is Plaintiffs' Exhibit 107.

19 Q. Sir, do you recognize this to be an interior shot of that
20 same storefront?

21 A. I believe so.

22 Q. All right. And sir, if the evidence shows that this
23 photograph were taken in December of 2010, do you see any signs
24 that say there should be no counterfeiting activity,
25 counterfeiting activity is a crime?

J2sWome1

Laboz - Direct

1 A. No, but it's not an entire shot of the premises.

2 Q. All right. OK. So we showed you the outside and we showed
3 you the inside, correct?

4 A. I'm not sure if this is the entire inside.

5 Q. Is that your best answer to my question?

6 A. Yes.

7 Q. OK. Now, sir, you remember the stipulation of settlement
8 said that any interior storerooms should be removed? Do you
9 remember that?

10 A. Yes.

11 Q. All right. And do you remember that statement about how
12 you agreed to do a walk-through before the building was
13 reopened -- this is, again, back in 2009 -- to make sure --

14 A. Yes.

15 MR. SCHICK: Objection, your Honor. That's not what
16 it said. It said plaintiff, the city, would do that. He's
17 mischaracterizing what the document said. I object.

18 THE COURT: The objection's overruled.

19 MR. GUNTHER: Thank you.

20 Q. And sir, do you remember that there was a requirement that
21 you agreed to as part of that stipulation of settlement to make
22 sure there were no hidden storerooms or storage facilities and
23 that everything be visible from the street?

24 A. Yes.

25 Q. All right. Now, sir, do you see there's a line going down

J2sWome1

Laboz - Direct

1 the back of the room?

2 MR. GUNTHER: I'm going to ask Mr. Lam to put a circle
3 around it. Put it all the way up to the top, Mr. Lam, showing
4 that line.

5 A. Yes.

6 Q. OK. Sir, do you see there's a latch right in the middle of
7 that line, right there?

8 A. Yes.

9 Q. Sir, do you understand that to be a storeroom or access to
10 a storeroom?

11 A. Yes.

12 Q. OK. So there was a storeroom, and again, the evidence
13 shows that this is a photograph that was taken in December of
14 2010. It shows, despite what you agreed to do as part of the
15 stipulation of settlement in 2009 with the city of New York,
16 that there was still an interior storage room at 375B Canal
17 Street, correct?

18 Can you answer that question yes or no, sir?

19 A. Well, when we rented the space --

20 Q. Can you answer the question yes or no?

21 A. Could you repeat the question?

22 Q. Yes.

23 If the evidence shows that by December 2010 -- this
24 photograph was taken in December of 2010 of 375B Canal Street.
25 Wouldn't you agree with me that despite the fact that you had

J2sWome1

Laboz - Direct

1 agreed to make sure that all storage areas in that premises
2 were removed as part of the stipulation of settlement with the
3 city of New York in 2009 there still was a storeroom, a back
4 storeroom in 2010, right?

5 A. We fulfilled the condition. There was no storeroom when we
6 delivered possession to the tenants.

7 Q. Sir.

8 A. So we fulfilled the condition with the city. The tenant
9 must have installed the storeroom after we delivered possession
10 to them.

11 (Continued on next page)

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J2SVOME2

Laboz - direct

1 BY MR. GUNTHER:

2 Q. Do you know, sir, as a fact whether that's the case?

3 A. Yes, because the city does a walk-through before we get
4 possession.

5 Q. Did you do a walk-through?

6 A. I don't recall.

7 Q. You don't recall.

8 Do you recall whether either of your brothers did a
9 walk-through?

10 A. One of us must have done it because the city would not
11 permit us to reopen the building if there were no storerooms.

12 Q. Sir, do you know as you sit here today whether anyone did a
13 walk-through before this building was reopened?

14 A. It's part of our practice that one of us would have done so
15 or somebody in our office would have done so, otherwise the
16 city would never let us reopen the space.

17 Q. So your testimony is that there was no storeroom, and that
18 at the time when the building reopened after the stipulation of
19 settlement of 2009, another one was built during the period
20 after that and you didn't see that, right?

21 A. Correct.

22 Q. Is that your testimony?

23 A. Yes.

24 Q. That's your testimony?

25 A. Yes.

J2SVOME2

Laboz - direct

1 Q. All right.

2 Sir, were you inspecting this property in 2010?

3 A. No.

4 Q. Were either of your brothers inspecting this property in
5 2010?

6 A. We have managers for that. No.

7 Q. Sir, did anyone -- to your knowledge, was anyone affiliated
8 with 375 Canal LLC inspecting this property to determine
9 whether there were storerooms that had been built in it in
10 2010?

11 A. I don't recall.

12 Q. Now, sir, did you -- you take this case seriously, right?

13 A. Absolutely.

14 Q. Right. And it's something that you are -- that you're here
15 testifying because you take it seriously, right?

16 A. Yes.

17 Q. Now, sir, in connection with your work on this case, did
18 you review the video that one of the investigators, Leslie
19 Quinonez, took of the purchase of a counterfeit Omega watch at
20 375 Canal Street on May 19, 2012?

21 A. I might have saw maybe like a few seconds of a clip of it,
22 but I didn't really review it, if that's what you mean.

23 Q. Okay.

24 Do you have any recollection when you reviewed it of
25 seeing the clerk retrieve the counterfeit watches from that

J2SVOME2

Laboz - direct

1 storeroom that we observed?

2 A. No, I really didn't pay attention to the -- really if I
3 saw -- I didn't pay attention to the clip.

4 Q. You didn't pay attention to it?

5 A. No. The clip was shown to me for maybe a few seconds and
6 we didn't follow through on it.

7 Q. Got it.

8 A. It wasn't part of my preparation.

9 Q. Got it. Okay. Didn't pay attention. Got it.

10 MR. SCHICK: Your Honor, he didn't say that.

11 Q. Now, let me ask you, sir, if you could answer this question
12 for me: One of the exhibits that we've put in evidence in this
13 case is Exhibit 240A, which is a report that the investigator
14 Brad Cole, who's testified in this case, put together after the
15 investigation that led to the purchase of the Omega counterfeit
16 watch at 375 Canal Street.

17 Have you ever seen that report?

18 A. I believe I did, but he tried four times to buy it.

19 MR. GUNTHER: Your Honor, I move to strike.

20 I asked him a very specific question.

21 THE COURT: He said he's seen it.

22 BY MR. GUNTHER:

23 Q. Okay. So you've seen it.

24 A. If I did, I don't recall.

25 Q. You don't recall whether you saw it?

J2SVOME2

Laboz - direct

1 A. I don't recall if I saw it, no.

2 Q. All right. So it's an important case to you, but you
3 didn't look at the video for the purchase of the watch, right?

4 MR. SCHICK: Your Honor --

5 THE COURT: That's not what he said.

6 MR. SCHICK: Your Honor, with all respect, he's
7 talking about events years later. We're not talking about the
8 lawsuit --

9 THE COURT: Mr. Schick, you can object, not
10 speaking --

11 MR. GUNTHER: He's making speeches.

12 MR. SCHICK: I object, your Honor.

13 I object, your Honor.

14 THE COURT: Overruled.

15 MR. GUNTHER: And your Honor, you're right, I was
16 imprecise --

17 THE COURT: Don't tell me I'm right. Just ask
18 questions.

19 MR. GUNTHER: Yes, sir, I will. Thank you.

20 BY MR. GUNTHER:

21 Q. It's an important case to you; you'd only looked at the
22 video quickly of the purchase, right?

23 THE COURT: That's what he said.

24 A. Yes.

25 Q. Okay.

J2SVOME2

Laboz - direct

1 It's an important case to you, but you can't recall
2 whether you've looked at the investigator's report, right?

3 MR. SCHICK: Asked and answered, your Honor.

4 THE COURT: Sustained.

5 MR. GUNTHER: Thank you, your Honor.

6 Q. Now, sir, I want to show you another exhibit that's already
7 in evidence, and that's Plaintiffs' Exhibit 138. And we've put
8 that up.

9 Now, sir, this is a matter, a lawsuit, that was filed
10 by Louis Vuitton against a number of entities, including 375
11 Canal LLC. Do you see that?

12 A. Yes.

13 Q. And the date of the document, it says January 17, 2006.

14 A. Yes.

15 Q. And sir, the court is the United States District Court for
16 the Southern District of New York, right?

17 A. Correct.

18 Q. And sir, this is an order for a permanent injunction on
19 consent; correct?

20 A. Yes.

21 Q. And the lawsuit that Louis Vuitton brought against these
22 entities, including 375 Canal LLC, involved allegations that
23 375 Canal LLC was permitting occupants of 375 Canal Street to
24 sell counterfeit Louis Vuitton goods; correct?

25 A. Yes.

J2SVOME2

Laboz - direct

1 Q. And 375 Canal LLC entered into this consent injunction with
2 Louis Vuitton in 2006, right?

3 A. Yes.

4 Q. Now, sir, looking at the first page, going down to the
5 bottom, there's a thing you see it says "consented to"?

6 A. Yes.

7 Q. Do you see that, consented to by defendants. And then one
8 of the defendants that consented to this consented injunction
9 is 375 Canal, LLC, right?

10 A. Correct.

11 Q. And sir, from your lawyer training, you know that an
12 injunction prohibits certain activity; correct?

13 A. Yes.

14 Q. Sir, pursuant to this injunction, I'm looking at the bottom
15 of page 2. And if we go to the bottom, it says: It is
16 hereby --

17 MR. GUNTHER: Stop right there. Thank you, Mr. Lam.

18 Q. "It is hereby ordered that," and then there's a number of
19 entities, but one of them is 375 Canal, LLC; correct?

20 A. Yes.

21 Q. "Individually and collectively," and then it goes on,
22 right, referring to various parents, subsidiaries, etc.

23 And then it says that it's ordered that --

24 MR. GUNTHER: And if you can keep going up a little
25 bit more, Mr. Lam, into page 3.

J2SVOME2

Laboz - direct

1 Q. It says: "Are permanently enjoined and restrained from."

2 Permanently is forever, right?

3 A. Yes.

4 Q. And "enjoined and restrained from" means you can't do it
5 anymore, right?

6 A. Correct.

7 Q. And it says: "1. Using, modifying, disseminating,
8 marketing, selling, or offering to sell any Louis Vuitton
9 counterfeit product in any manner whatsoever."

10 Do you see that?

11 A. Yes.

12 Q. You agreed to that in perpetuity on behalf of 375 Canal;
13 correct?

14 A. Yes.

15 Q. Now, sir, I'd like to show you what is also in evidence as
16 Plaintiffs' Exhibit 219.

17 First of all, before we go to that, I just want to
18 make sure we get the date of this consent injunction.

19 So if you'd look at the front page and if we go down
20 to the bottom, it says "dated December 30, 2005"; correct?

21 A. Yes.

22 Q. Okay. And prior to getting that, prior to making that
23 settlement, 375 Canal had been informed by Louis Vuitton -- by
24 lawyers for Louis Vuitton, they had been notified that there
25 were sales of counterfeiting activity going on; correct?

J2SVOME2

Laboz - direct

1 A. Correct.

2 MR. GUNTHER: You can take that down, Mr. Lam.

3 Thank you.

4 Q. You had a retail tenant at 375 Canal Street called T.A.
5 Discount Store; isn't that right?

6 A. Yes.

7 MR. GUNTHER: And let's put up Plaintiffs' 206, which
8 is in evidence. And if we can go to the second page.

9 Q. This is a standard form of lease. And this is, in fact, a
10 lease between the landlord at 375 Canal LLC and T.A. Discount
11 store, right?

12 A. Yes.

13 Q. You see it's made as -- of it doesn't have a day, but it
14 says July 2009; right?

15 A. Correct.

16 Q. It talks about 375B Canal Street as being the premises,
17 right?

18 A. Yes.

19 Q. And B refers to a subdivision of the address at 375 Canal
20 Street; correct?

21 A. Yes.

22 Q. And so there were two stores at this point under the 375
23 address facing out onto Canal Street, right?

24 A. Correct.

25 Q. Now, this lease was entered into after the 2004 settlement

J2SVOME2

Laboz - direct

1 of the lawsuit brought against 375 Canal by the City of New
2 York, right?

3 A. Yes.

4 Q. This lease was entered into after the 2006 settlement of
5 the lawsuit brought against 375 Canal LLC by the City of New
6 York, right?

7 A. Yes.

8 Q. This lease was entered into, sir, just before -- and I'll
9 represent to you the settlement with respect to the third New
10 York City -- City of New York of lawsuit against 375 Canal was
11 July of 2009. So this lease -- sorry, it was August of 2009.
12 So this lease was entered into about a month before you made
13 that settlement, right?

14 A. Yes.

15 Q. And sir, turning to page 8 of Plaintiffs' Exhibit 206 in
16 evidence, and if we go down, there's a heading that says
17 "Rent," right?

18 A. Yes.

19 Q. Now, what the top of this document --

20 MR. GUNTHER: We go back to where you were, Mr. Lam.

21 Q. It says: "Rider attached to and forming a part of the
22 lease." Do you see that?

23 A. Yes.

24 Q. And sir, a rider is a typical document at the back of a
25 lease; correct?

J2SVOME2

Laboz - direct

1 A. It's part of the lease.

2 Q. Okay.

3 And sir, it against says July 2009 is the date, right?

4 A. Yes.

5 Q. 375 Canal LLC is the landlord, right?

6 A. Yes.

7 Q. Tenant is T.A. Discount, right?

8 A. Yeah.

9 Q. Premises is 375 Canal Street, right?

10 A. Yes.

11 Q. And then it says under rent -- and I want to scroll down
12 just a little bit -- it says that from July 2009 to December
13 of -- the end of December of 2009, the rent would be \$11,000 a
14 month, right?

15 A. Correct.

16 Q. Then it goes on to say from January 1, 2010, to December
17 31, 2010, the rent would be \$144,000 per annum, or 12,000 per
18 month. Do you see that?

19 A. Yes.

20 Q. And, in fact, is that the rent that you charged during that
21 period?

22 A. Yes.

23 Q. All right.

24 Now, if you'll turn to page 10 of Plaintiffs' Exhibit
25 206, we're still in the rider of the lease, there's a heading

J2SVOME2

Laboz - direct

1 that says "Tenant's Use and Maintenance." It's paragraph 45.

2 Do you see that?

3 A. Yes.

4 Q. And sir, there it says -- and I'm looking at the first
5 sentence: "Subject to in accordance with the provisions of
6 this lease, tenant shall use the premises for the operation of
7 a retail store selling perfume, except that portion of the
8 premises located in the basement of the building shall be used
9 for storage purposes only." Do you see that?

10 A. Correct.

11 Q. Then it goes on to say: "Tenant agrees not to permit or
12 suffer the use of the premises for any other business purpose.

13 Do you see that?

14 A. Yes.

15 Q. Now, sir, do you know, did T.A. Discount, in fact, operate
16 375B Canal Street as a perfume store?

17 A. They sold some perfume.

18 Q. Do they sell a lot of other stuff?

19 A. Yes.

20 Q. T-shirts?

21 A. Yes.

22 Q. Jewelry?

23 A. Yes.

24 Q. Watches?

25 A. Yes.

J2SVOME2

Laboz - direct

1 Q. Pendants?

2 A. Yes.

3 Q. And sir, if you look --

4 A. By the way, there's nothing wrong with that.

5 Q. Your lawyer will have a chance to ask you questions.

6 A. Okay.

7 Q. And I'm sure he'll bring that up.

8 Now, sir, if you look at the next sentence, it says:

9 "Tenant shall not sell trademark or counterfeit merchandise of
10 any kind." Do you see that?

11 A. Yes.

12 Q. And it says: "In the event of the sale or possession of
13 counterfeit merchandise is conducted, maintained, permitted,
14 facilitated, promoted, or carried on, the premises shall
15 immediately be closed and the tenant shall immediately
16 surrender the entire premises to the landlord and deliver the
17 same vacant." Do you see that?

18 A. Yes.

19 Q. And it goes on to say various other things about
20 broom-clean condition, etc.

21 A. Yes.

22 Q. Now, sir, you put that provision in this lease; correct?

23 A. Absolutely.

24 Q. And sir, specifically, the lease provided for immediate
25 possession back to you in the event that counterfeiting

J2SVOME2

Laboz - direct

1 activity occurred; correct?

2 A. Correct.

3 Q. And sir, the purpose of this clause was to make sure that
4 your tenants don't sell counterfeit merchandise, right?

5 A. Correct.

6 Q. Now, sir, not all of your retail leases contain a clause
7 like this one, right?

8 A. Correct.

9 Q. And I'm specifically referring to the anti-counterfeiting
10 clause, right?

11 A. Correct.

12 Q. You only do that for certain types of businesses, right?

13 A. Correct.

14 Q. Okay. Now, I just want to go back to -- we still have up
15 on the screen paragraph 45, the rider from the lease at 375
16 Canal to T.A. Discount. And just going a little bit further,
17 in terms of if the tenant were to violate the
18 anti-counterfeiting provision, not only did they have to give
19 it back to you immediately vacant, it had to be free of all
20 occupants, right?

21 A. That's correct.

22 Q. Now, sir, at the time that the T.A. Discount was a tenant
23 at 375B Canal Street, the tenant of the space next door was
24 Bank of America, right?

25 A. That's right.

J2SVOME2

Laboz - direct

1 Q. There was an ATM next door, a Bank of America ATM next
2 door, right?

3 A. Yes.

4 Q. And that was at 375A Canal Street, right?

5 A. Yes.

6 Q. Now, sir, the lease with Bank of America didn't contain an
7 anti-counterfeiting clause, right?

8 A. Correct.

9 Q. And that's because a bank isn't likely to sell counterfeit
10 merchandise, right?

11 A. They are a bank.

12 Q. Right?

13 A. They didn't sell anything.

14 Q. They have services, right?

15 A. I'm sorry?

16 Q. They have services, don't they, banks?

17 THE COURT: He said they don't sell anything.

18 Q. Oh, sell anything. Okay.

19 Sir, did you include an anti-counterfeiting provision
20 in the July 2009 lease with T.A. Discount because for a retail
21 discount store located on Canal Street was more likely -- the
22 possibility of them selling counterfeit merchandise was higher
23 than, for example, Bank of America?

24 A. Yes.

25 Q. Okay.

J2SVOME2

Laboz - direct

1 Sir, there's nothing in this lease about having signs
2 posted that counterfeiting was a crime, right?

3 A. In the lease?

4 Q. Yes.

5 A. Not that I'm aware of.

6 Q. Do you want to check it? I will tell you, just to save
7 time --

8 A. I take your word for it.

9 Q. -- I went through it.

10 A. I take your word for it.

11 Q. Thank you.

12 There's nothing in this lease about dismantling or
13 removing all hidden storage facilities or structures, is there?

14 A. In the lease there's a -- they cannot do any alterations
15 without my consent.

16 Q. Sir, is there anything in the lease about dismantling or
17 removing any hidden structures? That's specifically my
18 question.

19 A. No.

20 Q. Sir, is there anything in this lease about allowing private
21 investigators that you've hired to monitor the premises to
22 determine whether there's counterfeiting activity going on?

23 A. Hire an investigator.

24 Q. Can you answer my question?

25 A. I don't need permission in my lease granted to send an

J2SVOME2

Laboz - direct

1 investigator in.

2 Q. You could have done that?

3 A. It's not necessary. If I need an investigator, he can just
4 walk in. It's a retail store.

5 So your implication is by not having the
6 investigator --

7 Q. Sir, I'm not implying anything; I'm just asking a question.

8 A. Okay.

9 Q. My question is pretty straightforward: Is there anything
10 allowing in the lease about monitors coming in to be able to
11 look to see what's going on in the store in terms of
12 counterfeiting activity, yes or no?

13 A. No, nothing prevented the monitor to come in regardless.

14 Q. All right.

15 And sir, did you have a monitor that was looking at
16 375 Canal Street?

17 A. At some point we did.

18 Q. Sir, did you have it in 2010?

19 A. I don't believe so.

20 Q. Okay.

21 And sir, did you have anyone other than you or your
22 brothers that would occasionally walk in or walk by your
23 properties as monitoring the properties?

24 A. Our property managers.

25 Q. Did you instruct any of your property managers during the

J2SVOME2

Laboz - direct

1 period 2005 to 2012 to regularly visit 375B Canal Street to
2 determine whether there was counterfeiting activity going on
3 there?

4 A. Absolutely. We make sure there's no counterfeit
5 merchandising being sold outright.

6 Q. Sir -- outright.

7 A. Yes.

8 Q. So you go in and look, right?

9 A. Yes.

10 Q. Did you have anyone that would go in and ask whether the
11 clerk or the store had counterfeit goods?

12 A. I don't know.

13 Q. Okay.

14 Sir, in the video that you said you looked at very
15 quickly --

16 A. Yes.

17 Q. -- do you recall in that video that the Omega merchandise
18 was not on display; the investigators had to ask for it, and
19 then the clerk went into the back room and got the counterfeit
20 Omega watches. Do you recall that?

21 A. The investigator went there four times.

22 Q. Sir, sir, sir --

23 A. So now you get the fifth time.

24 MR. GUNTHER: Your Honor, I'm --

25 THE COURT: Excuse me.

J2SVOME2

Laboz - direct

1 MR. GUNTHER: Yes.

2 THE COURT: Listen to his questions and answer his
3 questions.

4 THE WITNESS: Yes.

5 THE COURT: Mr. Schick will have an opportunity to
6 examine you and bring out all the information that you want.

7 THE WITNESS: Thank you, your Honor.

8 BY MR. GUNTHER:

9 Q. So my question is when you looked at that video, did you
10 see that it wasn't -- the watches, the Omega watches, weren't
11 on display; they had asked for them, the clerk went into the
12 back storeroom and retrieved them. Did you see that?

13 A. Yes.

14 Q. You did see that.

15 Now, sir, I'd like to turn to what's already in
16 evidence as Plaintiffs' Exhibit 90. And we'll put that up on
17 the screen.

18 Sir, this is a letter from the Collen IP law firm
19 dated September 28, 2011, and it's sent by Federal Express to
20 375 Canal LLC, care of United American Land LLC.

21 Do you see that?

22 A. Yes.

23 Q. And then it goes on with an address, and then it says:
24 Attention Albert Laboz. Do you see that?

25 A. Yes.

J2SVOME2

Laboz - direct

1 Q. That's you, right?

2 A. Yes.

3 Q. And the "re" says "Trademark Counterfeiting at 375 Canal
4 Street." Do you see that?

5 A. Yes.

6 Q. And sir, you received this letter on or about September 28,
7 2011, right?

8 A. Yes.

9 Q. And you definitely read it, didn't you?

10 A. Yes.

11 Q. And sir, do you see where it says -- the first paragraph
12 talks about various trademarks owned by the Swatch Group;
13 correct?

14 A. Yes.

15 Q. All right.

16 And if you go to the second paragraph, it says: "As
17 you are already aware, in December 2010 and February 10, 2011,
18 the New York Police Department arrested certain individuals
19 selling counterfeit versions of our client's Omega and Swatch
20 branded watches at a storefront retailer located at 375 Canal
21 Street." Do you see that?

22 MR. SCHICK: Objection, your Honor. If we can have a
23 brief sidebar. We discussed some of these issues yesterday.

24 THE COURT: No, no, no.

25 The objection is overruled.

J2SVOME2

Laboz - direct

1 MR. GUNTHER: Thank you, your Honor.

2 BY MR. GUNTHER:

3 Q. And then, sir, were you aware of enforcement actions that
4 were taken by the New York Police Department that involved
5 raids at 375 Canal Street for counterfeit goods in December
6 2010?

7 A. No.

8 Q. Were you aware of a raid that took place on February 10,
9 2011, again, where people at 375 Canal Street were arrested for
10 selling Omega branded watches?

11 MR. SCHICK: Objection, your Honor.

12 They asked for a ruling about certain of the issues
13 that they are now trying to go into.

14 THE COURT: Okay. Overruled.

15 A. No. First time I was aware, when I got this letter, ten
16 months after the raids.

17 Q. Did you investigate to determine whether such raids had
18 occurred?

19 A. I took it at face value.

20 Q. You accepted it as true?

21 A. I accepted it as true, absolutely.

22 Q. Okay.

23 A. Ten months later.

24 Q. Okay. Fair enough.

25 Were you aware, sir, generally, as a result of your

J2SVOME2

Laboz - direct

1 ownership of several buildings in the Canal Street area, that
2 there were enforcement activities related to counterfeiting
3 going on in 2010 and 2011?

4 A. I don't recall.

5 Q. You don't remember. Okay.

6 And if you go on to the next sentence in the second
7 paragraph of the letter: "Counterfeit watches bearing our
8 client's Omega and Swatch marks were also seized from this
9 location." Do you see that?

10 MR. SCHICK: Objection, your Honor. Same objection
11 about the ruling they asked for and received about those
12 claims.

13 THE COURT: Overruled.

14 MR. GUNTHER: Thank you.

15 Q. Do you see that, sir?

16 A. Yes.

17 Q. You received that information from Mr. Lindenbaum, the
18 Collen IP lawyer, on September 28, 2011, right?

19 A. Yes.

20 Q. Now, after you read the letter, you gave it to Stephanie
21 Goodman, right?

22 A. I believe so.

23 Q. Stephanie Goodman was an in-house lawyer for United
24 American Land, right?

25 A. Yes.

J2SVOME2

Laboz - direct

1 Q. And one of your lawyers responded to this letter, right?

2 A. Yes.

3 Q. Now, I'm showing you Plaintiffs' Exhibit 91, which is
4 already in evidence. This is an email from Sharyn Tritto at
5 pennprolaw.com. Do you see that?

6 A. Yes.

7 Q. And that's dated October 3, 2011. Do you see that?

8 A. Yes.

9 Q. All right.

10 She's responding to Mr. Lindenbaum's September 28,
11 2011 letter, right?

12 A. Correct.

13 Q. Okay.

14 And it says: "This firm represents the landlord in
15 the above-referenced premises. Your letters regarding same
16 have been forwarded to me for a response."

17 Do you see that?

18 A. Yes.

19 Q. Please be advised that the tenant occupying 361 Canal --
20 I'll go on to the next one. Sorry.

21 "With respect to 375 Canal, apparently the tenant
22 sublet the space to an entity that was selling counterfeit
23 goods bearing your client's marks."

24 Do you see that?

25 A. Yes.

J2SVOME2

Laboz - direct

1 Q. All right.

2 So Ms. Tritto, responding on your behalf, said that
3 apparently the tenant was, in fact, selling counterfeit goods
4 bearing your client's trademarks; correct?

5 A. I believe so.

6 Q. Okay.

7 And then she goes on to say: "The lease provides that
8 the tenant may not sublet the premises without the landlord's
9 consent." Do you see that?

10 A. Correct.

11 Q. Do you understand that to mean that there had been an
12 illegal subtenant in the building?

13 A. I wouldn't use the word "illegal."

14 Q. What would you use?

15 A. Violation of lease.

16 Q. Okay. I'll accept that. Thank you.

17 And then it says: "I have been informed that the
18 tenant had the offending tenant removed."

19 And again, I want to be very fair to you. Ms. Tritto
20 testified in this case and said that that second reference to
21 tenant was a typographical error and she meant to say
22 subtenant. Do you see that?

23 A. Correct.

24 Q. Then she goes on to say: "If you have any questions
25 regarding these matters, please feel free to contact me."

J2SVOME2

Laboz - direct

1 Right?

2 A. Correct.

3 Q. Now, I want to turn to a different topic, and that's about
4 monitoring at the properties that you own, okay?

5 A. Okay.

6 Q. Now, sir, in your experience, if there's a sale of
7 counterfeit merchandise at a retailer, it's not obviously
8 displayed typically, right?

9 A. Correct.

10 Q. Counterfeit merchandise is generally not sold front and
11 center, right?

12 A. Yes.

13 Q. That's not how it works, right?

14 A. I'm not an expert.

15 Q. Okay.

16 Now, sir, you've testified before that you may have
17 walked in or walked by 375 Canal Street to see what's there,
18 right?

19 A. Yes.

20 Q. But only occasionally, right?

21 A. Correct.

22 Q. You own 50 buildings; how much time can you spend with
23 respect to any particular one; correct?

24 MR. SCHICK: Object, your Honor.

25 THE COURT: Overruled.

J2SVOME2

Laboz - direct

1 Q. Am I right?

2 A. My office is in the neighborhood. We pass by, we walk by.
3 We are hands-on; we like seeing what's going on in our
4 properties.

5 Q. All right.

6 Occasionally you walk by, right?

7 A. Yes.

8 Q. But other than occasionally walking by or in, you have
9 never inspected the premises at 375 Canal Street to determine
10 whether there's counterfeiting activity taking place there,
11 right?

12 A. I had no reason to believe there was counterfeiting,
13 because I didn't have to inspect.

14 Q. You had no reason to believe, is that your testimony?

15 A. I'm sorry?

16 Q. Your testimony is you had no reason to believe?

17 A. Right.

18 Q. Okay.

19 Now, sir, apart from that, you didn't do anything to
20 determine if counterfeit goods were being sold, right?

21 A. Could you say that again? I'm sorry.

22 Q. Sure. Other than occasionally walking by or walking into
23 the store, you did not do anything to determine whether
24 counterfeit goods were being sold, right?

25 A. No.

J2SVOME2

Laboz - direct

1 Q. And sir, when you did those walk-ins, occasional walk-ins
2 or walk-bys, you just looked to see what was visible in the
3 store, right?

4 A. Yes.

5 Q. You made no effort to see if there was anything hidden
6 behind a door or otherwise, right?

7 A. Tenants don't like landlords walking into their spaces and
8 harassing them.

9 Q. Sir, I didn't ask you whether they like it or not. I'm
10 just asking you what you did or didn't do. Very simple
11 question.

12 A. No, I did not.

13 Q. Let me repeat the question; I want you to have it in mind.

14 Did you make any effort to see -- in those occasional
15 walk-bys or walk-ins, did you make any effort to see whether
16 there was anything hidden, counterfeit merchandise hidden in
17 back storerooms?

18 A. No.

19 Q. Now, sir, we discussed the earlier settlement of Louis
20 Vuitton, which occurred in December of 2005, right?

21 A. Yes.

22 Q. As part of that settlement, you hired a private
23 investigator to monitor the property for two years; correct?

24 A. Correct.

25 Q. But since those two years ended, that would have been about

J2SVOME2

Laboz - direct

1 2007, right?

2 A. Yes.

3 Q. 375 Canal LLC hasn't hired any private investigator to
4 monitor counterfeiting activities at the premises, right?

5 A. No.

6 Q. When the agreement was over with that private investigator,
7 you were done, right?

8 A. Correct.

9 Q. In your opinion, it wasn't necessary anymore, right?

10 A. Not only my opinion, Mr. Lindenbaum didn't request that in
11 his letter to me.

12 MR. GUNTHER: Your Honor, I just asked him a very
13 simple question.

14 Q. Let me try it again.

15 In your opinion, your opinion, it wasn't necessary,
16 right?

17 A. Correct.

18 Q. Thank you.

19 A. The monitoring only monitors --

20 Q. Sir --

21 THE COURT: Let me remind you, answer his questions.
22 Mr. Schick will have an opportunity to ask you --

23 THE WITNESS: Okay. Apologies, your Honor.

24 Q. Sir, since the agreement with the private investigator
25 event ended in 2007, after that board provision in the Louis

J2SVOME2

Laboz - direct

1 Vuitton settlement agreement expired, you've not had since then
2 any type of investigator monitor any of your properties to
3 determine whether there's sale of counterfeit goods, right?

4 A. You characterize that as an investigator; it's really a
5 monitor. It wasn't an investigator, it's a monitor.

6 Q. There was an investigator hired, that's my question.

7 A. A monitor. The monitor. We call them monitors.

8 Q. Sir, I'm asking you a question now.

9 A. Okay.

10 Q. If you could listen to my question.

11 A. Yes.

12 Q. My question is subsequent to 2007, have you ever hired any
13 private investigator or private investigation firm to monitor
14 any of your properties for counterfeiting activity since that
15 day?

16 A. No.

17 Q. Now, sir, let me ask you this: When you occasionally walk
18 by and into 375 Canal, is it your testimony that on the
19 occasions that you did that, you didn't see any counterfeit
20 merchandise, is that your testimony?

21 A. Correct.

22 Q. Would you characterize that as a failed buy, what you did?

23 A. No.

24 Q. You didn't try to buy it, right?

25 A. Right.

J2SVOME2

Laboz - direct

1 Q. Just observing, right?

2 A. They would never sell me as a landlord a watch.

3 Q. Sir, could you answer the question?

4 A. Of course they wouldn't sell it to me though.

5 Q. Sir, sir, please, I'm just asking you a yes-or-no question.

6 MR. SCHICK: Objection, your Honor.

7 He's not on the stand to discuss failed buys and what
8 Brad Cole did or didn't do.

9 THE COURT: Mr. Schick, please try not to be so
10 argumentative.

11 Mr. Gunther, just ask questions.

12 MR. GUNTHER: Yes, sir. Yes, sir.

13 I think I made the point, your Honor.

14 THE COURT: Go on to something else.

15 MR. GUNTHER: Yes, I will.

16 BY MR. GUNTHER:

17 Q. Now, sir, Mr. Laboz, 375 Canal Street today, in February
18 2019, is a wine store, right?

19 A. Yes.

20 Q. But it didn't become a wine store until 2015, right?

21 A. Right.

22 Q. That was three years after you purchased the Omega branded
23 watch from 375 Canal Street in May of 2012, right?

24 A. Okay.

25 Q. Correct?

J2SVOME2

Laboz - direct

1 A. Yes.

2 Q. And sir, you and your brothers own a number of buildings on
3 Canal Street, right?

4 A. Yes.

5 Q. And in the Canal Street area, right?

6 A. Yes.

7 Q. Sir, let me put up what is Plaintiffs' Exhibit --
8 demonstrative exhibit -- I think it's 222.

9 MR. GUNTHER: Can I just see that on the screen before
10 we put it up for everybody? I'm actually looking at --

11 THE COURT: 222 is already --

12 MR. SCHICK: Objected to.

13 MR. GUNTHER: Your Honor, that's not what I meant to
14 show. 1-10.

15 MR. SCHICK: Your Honor, if you look at the exhibit on
16 the bottom, they refer to a source that's already been
17 objection sustained.

18 MR. NOYES: Speech in front of the jury, your Honor.

19 MR. GUNTHER: It should be taken down. I did not
20 intend to show it to the jury. It was shown in the opening
21 statement.

22 Your Honor, my question is simply to put this up and
23 ask him if those are the buildings that he owns in the Canal
24 Street area. That's all I'm going to do. And he can answer it
25 yes or no or otherwise and then I'll move on.

J2SVOME2

Laboz - direct

1 THE COURT: How many buildings do you own in the Canal
2 Street area, Mr. Laboz?

3 THE WITNESS: Half a dozen, more or less. Seven.

4 BY MR. GUNTHER:

5 Q. And sir, all of those buildings have retail space in them?

6 A. Yes.

7 Q. Currently do several of those buildings have souvenir
8 shops?

9 A. Some of them do, yeah.

10 Q. Okay.

11 Some of them are discount shops like T.A. Discount?

12 A. Souvenir shops. I don't know if it's discounts.

13 Q. Fair enough.

14 They sell watches, right?

15 A. Yes.

16 Q. They sell T-shirts, right?

17 A. Yes, yes.

18 Q. They sell jewelry, right?

19 A. Yes.

20 Q. Some of those locations, those storefronts on buildings
21 that you own on Canal Street are currently vacant, right?

22 A. No.

23 Q. Oh, you have no vacancy?

24 A. They are activated by artists. We've given out spaces with
25 a local artist group to activate them for artist exhibits.

J2SVOME2

Laboz - cross

1 Q. But, sir, you're not collecting rent from those buildings,
2 right?

3 A. I'm sorry?

4 Q. You're not collecting rent from those spaces, right?

5 A. No.

6 Q. And if you were to find a tenant for those spaces, they
7 would pay you rent, assuming that the tenant was appropriate to
8 you, you'd take it, right?

9 A. Sure.

10 Q. So currently in the Canal Street area one of the things
11 that you are trying to do is to rent retail space, correct, in
12 some of your buildings?

13 A. Once we finish with this artist exhibit, down the road we
14 plan on doing that, yes.

15 Q. Okay. All right.

16 MR. GUNTHER: Your Honor, I have no further questions
17 of the witness. Thank you.

18 THE COURT: Mr. Schick.

19 MR. GUNTHER: Thank you, Mr. Laboz.

20 THE WITNESS: Thank you.

21 CROSS-EXAMINATION

22 BY MR. SCHICK:

23 Q. Can I ask you, Mr. Laboz, you mentioned at the end the
24 artist program. And Mr. Gunther asked you if you collected
25 rent. Describe the artist program and what is going on in

J2SVOME2

Laboz - cross

1 those buildings.

2 A. So we're dealing with a local artist group that is
3 activating the space and having local artists, show them the
4 space. And in the meantime -- and correction to -- I should
5 say Mr. Gunther, sometimes we get like a pop-up tenant that
6 will come in and do some business and they'll pay rent. But,
7 for the most part, it's really to display art.

8 Q. Now, Mr. Gunther asked you if the artists pay you money and
9 you said the answer is no; correct?

10 A. Correct.

11 Q. Does the artist program cost you money?

12 A. Yeah, we have to carry the building.

13 Q. Was there any fund created to fund the artist program?

14 A. Yes.

15 Q. And who created that fund?

16 A. We did.

17 Q. And who paid for that fund?

18 A. I did.

19 Q. How much money did you contribute to that fund?

20 A. About \$80,000.

21 Q. And was the purpose of creating that fund and giving the
22 space to allow opportunities for local residents?

23 A. Yes.

24 THE COURT: We're wandering pretty far afield now.

25 Q. With respect to 375 Canal LLC, we've talked about how long

J2SVOME2

Laboz - cross

1 you've owned the building; correct?

2 A. Correct.

3 Q. Who owned the building before you and your brothers owned
4 the building?

5 A. My father owned it.

6 Q. And did your father own properties on Canal Street?

7 A. Yes.

8 Q. And what was your father's background? Did he come into
9 the real estate business?

10 A. My father was born in the depression era, came from a
11 broken home. First generation immigrant mother. And became --
12 never graduated high school and didn't have skills, but he was
13 a salesman. So he used to peddle from town to town, open
14 seasonal stores in different towns, Kennebunkport, Maine;
15 Texas. His thought really was to deal with smaller tenants
16 and, you know, deal with the local merchants.

17 Q. Did the bank banks of America of the world pay more money
18 or less money in rent than the local merchants you've been
19 talking about renting to this morning?

20 A. More money.

21 Q. Do the Starbucks of the world pay more money or less money?

22 A. More money. In fact, we were negotiating another letter of
23 intent with Starbucks. And this is like years back. And we're
24 going back and forth. My dad just pointed out the local
25 merchant. And we thought we were smart being young kids

J2SVOME2

Laboz - cross

1 showing my dad how business should be, and my father showed us.

2 Q. Now, Mr. Gunther before showed you a couple of settlements,
3 and I want to discuss a settlement that he showed you.

4 Do you know that in the settlements with the city, did
5 the city insist that the tenant who sold counterfeit
6 merchandise, did the city insist that the tenant be -- that the
7 tenant vacate the premises?

8 A. The offending occupant, yes.

9 Q. Let's go to Exhibit 140, if we can. And if we could turn
10 to the last page of 140.

11 MR. SCHICK: This is in evidence already, your Honor.

12 Q. This is a signature page and there's a lot of people who
13 signed this stipulation. Do you see that?

14 A. Yes.

15 Q. And it mentions the law firm of Penn Proefriedt, right?

16 A. Yes.

17 Q. And were they representing 375 Canal LLC?

18 A. Yes.

19 Q. Okay.

20 That is the name below -- and that's Ms. Tritto;
21 correct?

22 A. Correct.

23 Q. And now below that is the name Jian Liang Ge.

24 Do you see that?

25 A. Yes.

J2SVOME2

Laboz - cross

1 Q. And Mr. Jian Liang Ge signed that; correct?

2 A. Yes.

3 Q. Now, were 375 Canal's lawyers representing the tenant in
4 this?

5 A. No.

6 Q. And now, if you see on the right side, there are more
7 signatures.

8 A. Yes.

9 Q. And that's the signature below the name Michael Cardoza, do
10 you see that?

11 A. Yes.

12 Q. Now, Mr. Cardoza didn't sign that. He was the Corporation
13 Counsel, an esteemed position; most people have gone on to
14 greater things. But below that it indicates Allen Schwartz;
15 correct?

16 A. Yes.

17 Q. Would that be the lawyer for the city who signed it on
18 behalf of Mr. Cardoza?

19 A. Yes.

20 Q. Now, if you go back to paragraph 5 on page 3, does this
21 indicate that Mr. Jian Liang Ge was permitted to retain his
22 occupancy in this space?

23 A. Yes.

24 Q. Now, did you instruct Ms. Tritto to advocate on behalf of
25 Mr. Jian Liang Ge?

J2SVOME2

Laboz - cross

1 A. No.

2 Q. Did you tell the city you wouldn't settle with them unless
3 they allowed Mr. Jian Liang Ge to stay in?

4 A. Of course not.

5 Q. Do you think the city did something wrong by allowing
6 Mr. Jian Liang Ge to stay in?

7 MR. GUNTHER: Objection, your Honor.

8 THE COURT: Overruled.

9 A. Listen, it was their call.

10 Q. Now, I want to pull up -- we saw this morning from
11 Ms. Caponegro -- and it's PX 44/47, hold on one second. We'll
12 pull it up in one second. PX 44. And it will be on the screen
13 in a moment. Second page.

14 MR. SCHICK: My apologies.

15 THE COURT: What document are we looking at,
16 Mr. Schick?

17 MR. SCHICK: I'll be, I think, sort of brief.

18 THE COURT: No, no. What document are we looking at?

19 MR. SCHICK: Oh, I'm sorry. 47, PX 47.

20 Q. I think Mr. Gunther asked you if it's always the case that
21 counterfeit goods that were found at 375 Canal were in hidden
22 storerooms in the back or something like that.

23 Do you recall that?

24 A. Yes.

25 Q. And if you look at the second sentence in the email to

J2SVOME2

Laboz - cross

1 Sharyn Tritto.

2 A. Yes.

3 Q. Do you see it talks about -- well, the first sentence says:

4 "Hi, Sharon. Our investigators also made observations of
5 counterfeit merchandise." Do you see that?

6 A. Yes.

7 Q. Does it say that they needed an undercover investigator?

8 A. No.

9 Q. Does it say that everything is in a hidden storeroom?

10 A. No.

11 Q. In fact, did Mr. Gunther show you anything this morning
12 that indicated that prior to the purchase that led to this
13 lawsuit, that there was a sale related to a back room or space?

14 A. No.

15 Q. And there may have been, because you certainly agreed to
16 make sure there is no space, but he didn't show you any such
17 things; correct?

18 A. Correct.

19 Q. And I can represent to you that this morning plaintiff and
20 the witness before you put on documents like this that showed
21 sales of a large number of allegedly counterfeit goods being
22 displayed. Do you see that?

23 A. Yes.

24 Q. So if you had gotten a letter like this, would that tell
25 you that walking by to make observations would be similar to

J2SVOME2

Laboz - cross

1 what the investigator who had previously sent a complaint
2 letter found?

3 A. Yes. Absolutely.

4 Q. Now, you testified earlier, Mr. Gunther asked you if there
5 was a specific document in the lease with T.A. Discount that
6 related to -- that said that they couldn't have a storeroom.

7 Do you recall he asked you a question?

8 A. Yes.

9 Q. And you started to say something at the time, and then
10 Mr. Gunther said it was my opportunity. So now it is.

11 And I think what you started to say had to do with is
12 there a provision in the lease that the tenant could not --

13 MR. SCHICK: It's document 206, if you want to put it
14 up.

15 MR. GUNTHER: Your Honor, this is totally leading;
16 this whole examination has been leading. And I would
17 appreciate it if we'd have a few unleading questions.

18 So I object.

19 THE COURT: Overruled.

20 Q. Mr. Laboz, were tenants allowed to do any work that they
21 wanted in the spaces that you rented?

22 A. No.

23 Q. What would prevent them from doing that?

24 A. The lease specifically says that any alterations would need
25 my consent; and if not, it would be a default.

J2SVOME2

Laboz - cross

1 Q. Do you recall -- if you settled with the city and the city
2 settlement said a space would be delivered a certain way, would
3 the city have any follow-up after settlement?

4 A. Yeah.

5 Q. At any time?

6 A. Yes.

7 Q. What would the follow-up be?

8 A. They would inspect the premises before they release us.

9 Q. And would the city be aware of the stipulation in the
10 settlement that said that it had to be open?

11 A. Of course --

12 MR. GUNTHER: Objection.

13 A. Of course they --

14 THE COURT: Overruled.

15 Of course what?

16 A. Of course they would, because they made the settlement
17 agreement.

18 Q. And you would make sure -- take efforts to make sure that
19 the space was delivered as required under the stipulation?

20 A. Of course. Otherwise, the city would not let me go back
21 and rent the space.

22 Q. And the lease would have prohibitions for the tenant to
23 change that?

24 A. Correct.

25 Q. Now, I want to go back for a moment to Exhibit 90.

J2SVOME2

Laboz - cross

1 Mr. Gunther asked you if you received this letter and
2 ultimately transmitted it to Sharyn Tritto for a response.

3 Do you recall that?

4 A. I don't see the letter.

5 Q. Oh, I'm sorry. It is not up on your screen?

6 A. No, but what is it?

7 THE COURT: Number 90.

8 Q. Number 90.

9 You learned from this morning how to hit the screen
10 the right away to get it going again.

11 A. All right. Go ahead.

12 THE COURT: He's got it in his notebook, Mr. Schick.

13 Q. Mr. Laboz, did you have occasion -- before we get to the
14 specifics of this document, Mr. Laboz, have you ever had
15 occasion to have to evict a tenant?

16 A. Yes.

17 Q. And is it sometimes a contentious process?

18 A. Very.

19 Q. It's a legal process?

20 A. Yes.

21 Q. And --

22 A. Timely.

23 Q. I'm sorry.

24 Is there evidence necessary to initiate that process?

25 A. Depending on what the default is, yes.

J2SVOME2

Laboz - cross

1 Q. Now, I want you to look through what's been marked as
2 Exhibit 90.

3 A. Yes.

4 Q. And is there any evidence that was provided by the Collen
5 firm about the alleged counterfeit?

6 A. No.

7 Q. Take your time. There are pages attached to it, so please
8 let's go page-by-page. That's the first page, right?

9 I think you said -- it says: As you are already
10 aware. You testified you were not already aware?

11 A. That's correct.

12 Q. Okay.

13 Now, the second page, it says on top: We demand that
14 you immediately remedy the situation by taking the following
15 action. Correct?

16 A. Correct.

17 Q. Did you advise either -- anybody who worked for you to push
18 back or fight back with whatever Mr. Lindenbaum requested?

19 A. No, we cooperated immediately. We take this very seriously
20 and we want to cooperate and eradicate the offending action.

21 Q. Let's go to the next page.

22 So this is a two-page letter, okay.

23 Let's go to the next page.

24 Now, this is Omega's trademark, right?

25 A. Correct.

J2SVOME2

Laboz - cross

1 Q. Now, if you sent that to the court and saying, Please evict
2 the tenant because Omega's lawyer sent this to me, could you
3 get the tenant evicted?

4 A. No.

5 Q. Next page.

6 That's a Swatch trademark. If you attach that, now
7 you have not one trademark, but two, now would the judge be
8 impressed?

9 A. No.

10 Q. Let's go to the next one.

11 How about a third one, would the judge say you've got three
12 trademarks attached?

13 A. No.

14 Q. Keep on going.

15 Now you've got a fourth watch.

16 A. No.

17 THE COURT: The point is regardless of the number of
18 attachments, you'd be in the same position; correct?

19 THE WITNESS: I'll be laughed out of court.

20 Q. Is that because you need evidence?

21 A. You need evidence, yes, absolutely.

22 Q. Now, Mr. --

23 THE COURT: Gunther.

24 Q. Mr. Gunther --

25 MR. SCHICK: Thank you, your Honor.

J2SVOME2

Laboz - cross

1 Q. Mr. Gunther asked you if he showed you that -- you received
2 rent from T.A. Discount; correct?

3 A. Correct.

4 Q. And you received -- and he also mentioned there was a
5 subsequent tenant; correct?

6 A. Correct.

7 Q. And the subsequent tenant was a wine store; correct?

8 A. Correct.

9 Q. And without getting into specifics, do you receive roughly
10 the same rent from the wine store as you did from T.A.

11 Discount?

12 A. Yes.

13 Q. You're familiar with Amazon, correct, or eBay?

14 A. Yes, yes.

15 Q. EBay gets a cut of every sale; correct?

16 A. Correct.

17 Q. Do you have an eBay-like relationship with the tenants at
18 375 Canal Street?

19 A. Not at all.

20 Q. So you didn't profit from whatever they did?

21 A. No.

22 Q. They paid rent; correct?

23 A. They only pay rent.

24 Q. Now, are there any expenses -- I don't want to get into a
25 long thing, but does the government impose any charges on

J2SVOME2

Laboz - cross

1 buildings that you own?

2 A. Yes. We have to pay mortgages, we have to pay insurance,
3 we have to pay taxes, taxes, water, sewer.

4 THE COURT: They are not taxes, water and sewer.

5 THE WITNESS: Water and sewer. That's true.

6 Q. Now, the city -- Mr. Gunther showed you a few settlements
7 with the city; correct?

8 A. Yes.

9 Q. Did the city ever impose a requirement to be a monitor?

10 A. No.

11 Q. To your knowledge, did the city ever request it as part of
12 the settlement? Did you push back or fought back?

13 A. I'm sorry, say that again.

14 Q. Did the city ever request a monitor as part of settlement
15 and you said, No, we don't agree to that?

16 A. No, they never asked me for a monitor. Mr. Lindenbaum
17 didn't ask me for a monitor, no.

18 Q. Now, we showed you a letter from Mr. Lindenbaum that was
19 dated September 28, 2011. And we showed you Ms. Tritto's
20 response, right? Mr. Lindenbaum said please respond by October
21 11th?

22 A. Right.

23 Q. Ms. Tritto responded by October 3rd, just a couple of days
24 later?

25 A. Right.

J2SVOME2

Laboz - cross

1 Q. Now, after that, did Mr. Lindenbaum ever write back with
2 respect to any action that you had taken that Ms. Tritto had
3 communicated to him?

4 A. No, it seems like he was satisfied. We removed the
5 offending occupant and --

6 MR. GUNTHER: Your Honor, I move to strike anything
7 after the answer to the question.

8 THE COURT: Overruled.

9 Q. Now, at any time -- at any time -- so, for example, this
10 lawsuit involves the alleged sale of -- this lawsuit involves a
11 purchase that was made at 375 Canal on May 19, 2012. That's
12 what they are talking here about; correct?

13 A. Correct.

14 Q. Did Mr. Lindenbaum send you any letter, either before or
15 after that sale, either complaining of the condition or
16 complaining of counterfeit products?

17 A. No.

18 Q. Now, have you seen documentary evidence about instances in
19 which Mr. Lindenbaum or his colleagues sent investigators to
20 search for counterfeit merchandise at 375 Canal?

21 A. No.

22 Q. You haven't seen those documents about the failed buys?

23 A. No.

24 Q. Okay.

25 Mr. Lindenbaum didn't send them to you, did he?

J2SVOME2

Laboz - cross

1 A. No.

2 Q. Mr. Lindenbaum and the Collen firm --

3 MR. GUNTHER: Your Honor, there's no foundation. He
4 just said he doesn't know --

5 MR. SCHICK: I want to make sure he didn't send it to
6 him.

7 THE COURT: You want to make sure he did what?

8 Q. Let me ask you a question: Mr. Gunther asked you if you
9 saw a report by Brad Cole relating to May 19th, 2012, do you
10 remember that? He asked you if you saw an investigator report
11 by Mr. Cole?

12 A. Yes, yes.

13 Q. Okay.

14 And you said you don't recall that you did; correct?

15 A. Correct.

16 Q. And I'm asking you Mr. Cole -- I'll represent that Mr. Cole
17 prepared several reports about 375 Canal.

18 A. Okay.

19 Q. Have you seen any of them?

20 A. No.

21 Q. Regardless of what they said?

22 A. No.

23 Q. Whether they said there was a failed buy or a buy?

24 MR. GUNTHER: Now we're off into the netherworld.

25 THE COURT: Objection sustained.

J2SVOME2

Laboz - cross

1 MR. SCHICK: Just give me one moment, I think I have
2 one question. Just give me one moment. I think I'm going to
3 have the last question.

4 (Pause)

5 BY MR. SCHICK:

6 Q. Has anybody who works for 375 Canal LLC or you in any
7 capacity ever been charged -- claimed either by the city or a
8 private trademark owner with selling counterfeit goods?

9 A. No.

10 Q. Has anybody ever alleged that anybody who works for you
11 participated in the sale of counterfeit goods?

12 A. No.

13 Q. And is that at any time?

14 A. At any time.

15 Q. At any place.

16 If Mr. Lindenbaum had written to you that somebody who
17 worked for you participated in the sale of counterfeit goods,
18 would you have taken action?

19 A. Absolutely.

20 Q. If Mr. Lindenbaum would have followed up to the email from
21 Ms. Tritto, Mr. Lindenbaum had written back to Ms. Tritto's
22 October 3rd, 2011 email in which she said remove the offending
23 subtenant and asked for more, would you have cooperated with
24 them?

25 A. 100 percent. She said we cooperated previously.

J2SVOME2

Laboz - redirect

1 MR. SCHICK: Thank you, your Honor.

2 No further questions.

3 MR. GUNTHER: Just a little redirect, your Honor.

4 THE COURT: All right.

5 MR. GUNTHER: Can we please put up Plaintiffs' Exhibit
6 87, which is in evidence.

7 REDIRECT EXAMINATION

8 BY MR. GUNTHER:

9 Q. Sir, do you see this is an email from Lisa Caponegro at a
10 law firm, do you see that, to Sharyn Tritto?

11 A. Yes.

12 Q. And the subject is 375 Canal Street. Do you see that?

13 A. Yes.

14 Q. And the date of that email, sir, is April 14, 2011.

15 Do you see that?

16 A. Yes.

17 Q. And it says: "Hi, Sharon. On April 6th, 2011, our
18 investigators made an evidential purchase of a counterfeit
19 Chanel necklace at 375 Canal Street. I have attached a
20 declaration for your reference."

21 Do you see that?

22 A. Yes.

23 MR. GUNTHER: Let's turn to the declaration, if we
24 can, and put up paragraph 3.

25 Q. The declaration says: "On April 6, 2011, an undercover

J2SVOME2

Laboz - redirect

1 investigator acting under my supervision and control went to
2 375 Canal Street, New York, New York. The undercover
3 investigator purchased one necklace bearing the Chanel
4 trademark which was identified as a counterfeit."

5 Do you see that?

6 A. Yes.

7 Q. "The necklace was purchased for \$35 from the Asian female
8 vendor." Do you see that?

9 A. Yes.

10 Q. Then it goes on to say, this is the investigator's report:
11 "The vendor retrieved the necklace from a black plastic bag
12 that was stored below the jewelry counter." Do you see that?

13 A. Yes.

14 Q. Do you have any basis to disagree that that, in fact, is
15 accurate?

16 A. It's like any other store.

17 Q. Like any other store, right?

18 A. Yes.

19 Q. Yes. Thank you.

20 MR. SCHICK: Your Honor --

21 Q. Now, let me go on to, if I can -- and I'd like to put up --
22 well, let me do this:

23 Sir, you talked in your examination by Mr. Schick
24 about the difficulties of evicting tenants, right?

25 A. Correct.

J2SVOME2

Laboz - redirect

1 Q. Let me ask you this: About how much do you think it would
2 cost you to evict a tenant in 2012 who had been accused or
3 credibly accused of counterfeiting activity?

4 A. How much it would cost?

5 Q. Yes, legal fees, whatever. Give me an estimate.

6 MR. SCHICK: Your Honor, we didn't get into the cost
7 of it, we got into the time of it. This is really beyond the
8 scope.

9 MR. GUNTHER: Your Honor, it's relevant and I'll show
10 why.

11 THE COURT: All right.

12 A. In legal fees?

13 Q. Yes.

14 A. I don't know, 15, 20,000.

15 Q. 20,000. Okay.

16 A. Depends.

17 Q. Sure.

18 A. Depends if they fight and delay and drag it out and drag it
19 out, or we do a quick settlement, which we really try to do
20 usually.

21 Q. Okay. But it could be as much as 20 grand, right?

22 A. Could be.

23 Q. All right.

24 Sir, how much would it cost to put up a couple of
25 signs that say "counterfeiting is a crime"?

J2SVOME2

Laboz - redirect

1 A. Not much.

2 Q. Fifty bucks, 100 bucks --

3 A. Maybe.

4 Q. -- if you made them fancy? Right?

5 A. Correct.

6 Q. How much would it cost to make sure that all storage areas
7 and back rooms had been removed on an ongoing basis? How much
8 would it cost to have somebody walk in and check that at 375
9 Canal Street?

10 A. I don't know.

11 Q. Not a lot, right?

12 A. Nope.

13 Q. Less than 20 grand, right?

14 A. Yeah.

15 Q. Sir, how much would it cost to hire a private investigator
16 to investigate whether properties like 375 Canal, where there
17 were repeated instances of counterfeiting activity, how much
18 would it have cost you to hire a private investigator to
19 monitor those properties?

20 A. Listen --

21 Q. Can you answer that question, sir?

22 A. It wouldn't cost much, but all --

23 Q. That's all I asked.

24 A. -- not work --

25 Q. That's all I ask.

J2SVOME2

Laboz - recross

1 A. Throwing out a tenant works.

2 Q. That's all I asked you.

3 Thank you very much.

4 MR. SCHICK: I just have one question, your Honor.

5 THE COURT: Yes, Mr. Schick.

6 MR. SCHICK: Or two questions.

7 Keep this up, Mr. Lam, if you can, please.

8 RECROSS EXAMINATION

9 BY MR. SCHICK:

10 Q. Mr. Gunther showed you paragraph 3; correct?

11 A. Correct.

12 Q. And he implied in paragraph 3 that this involves something
13 found from a back storeroom; correct?

14 A. Yeah, but it wasn't.

15 Q. I'm just asking you. Right? Correct?

16 A. Yes.

17 Q. And he cut you off when you tried to answer. I just did
18 that too.

19 MR. SCHICK: I guess we're a little alike, Bob.

20 Q. But, in any event, does anything in paragraph 3 suggest
21 that there was something found at a back storeroom?

22 A. No.

23 Q. What does it say?

24 A. It says: "The offender retrieved the necklace from a black
25 plastic bag that was stored below the jewelry counter."

J2SVOME2

Laboz - recross

1 Q. Okay. Now, one other question, which is, this is an
2 affidavit that a trademark owner sent to you to try to help you
3 get action against a tenant; correct? If you go back to the
4 first page, do you see that?

5 A. Yes.

6 MR. SCHICK: Oh, Mr. Lam, I'm sorry.

7 THE COURT: Page 87.

8 MR. SCHICK: Just one up, Mr. Lam. I'm sorry.

9 Go down a little bit.

10 THE COURT: Mr. Laboz.

11 THE WITNESS: Thank you, your Honor.

12 A. Okay. Screen is out.

13 Okay. Go ahead.

14 Q. Do you see this is an email that accompanied the
15 declaration that was provided to Sharyn Tritto to help her
16 remove a tenant? Do you see that?

17 A. Yes.

18 Q. Now, do you recall whether Mr. Lindenbaum or anybody at his
19 firm or anybody working for Omega gave you any affidavits with
20 respect to any activity that occurred at 375 Canal?

21 A. No, they gave us nothing.

22 MR. SCHICK: Nothing further, your Honor.

23 THE COURT: Mr. Laboz, you're excused.

24 THE WITNESS: Thank you, your Honor.

25 (Witness excused)

J2SVOME2

1 MR. SCHICK: Mr. Laboz can stay in the courtroom at
2 this point?

3 THE COURT: Yes.

4 Do you have any objection, Mr. Gunther?

5 MR. GUNTHER: No, your Honor, I have no objection at
6 all. Be happy to have him watch.

7 THE COURT: Do you have another witness?

8 MR. GUNTHER: Your Honor, at this point the plaintiff
9 rests.

10 Your Honor, there are a few exhibits that I want to
11 make sure I get moved into evidence, and I can do that at any
12 appropriate time, but I want to make sure they are all in
13 evidence as part of my case.

14 THE COURT: All right.

15 Ladies and gentlemen, we'll take our luncheon recess
16 now. We'll resume about quarter after 12. Thank you.

17 (Jury not present)

18 MR. GUNTHER: Your Honor, I just want -- I'm going to
19 have Mr. Noyes do it; he knows what he's talking about.

20 MR. NOYES: Your Honor, during the examination of
21 Ms. Tritto yesterday, there were some objections to evidence
22 that Ms. Gostin offered; they were overruled.

23 We re-reviewed the transcript, and the transcript does
24 not reflect that they were in evidence, so we would just move
25 them again, your Honor.

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1 THE COURT: What are they?

2 MR. NOYES: They are PX 44, PX 47, PX 79.

3 THE COURT: 44, 47, 40 --

4 MR. GUNTHER: 79.

5 MR. NOYES: 79. 164.

6 MR. SCHICK: I'm sorry, I can't hear you.

7 MR. NOYES: 164.

8 MR. SCHICK: Sure.

9 MR. NOYES: And then 227.

10 MR. SCHICK: Can you please give us a minute.

11 MR. DELLA FERA: Your Honor, we reviewed the
12 transcript. I believe the issue is that they weren't listed in
13 the final -- I'm sorry.

14 MR. NOYES: I apologize. I misspoke.

15 Just so the record is clear, it's 228 is the final
16 exhibit.

17 THE COURT: All right.

18 Mr. Della Fera.

19 MR. DELLA FERA: We reviewed the transcript; we
20 noticed the same issue. We believe that it's in the body of
21 the transcript. They were offered, it was just not reflected
22 on the final page. We have no issue.

23 THE COURT: So it's clear, 44, 47, 79, 164, and 228
24 are in evidence.

25 MR. NOYES: Thank you, your Honor.

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1 (Plaintiffs' Exhibits 44, 47, 79, 164, 228 received in
2 evidence)

3 THE COURT: Does that take care of your --

4 MR. NOYES: It does, your Honor.

5 THE COURT: Okay. So you're finally rested?

6 MR. GUNTHER: I'm as rested as I could be, your Honor.

7 THE COURT: Do you want to make motions, Mr. Schick?

8 MR. SCHICK: Yes, your Honor, I'd like to make a
9 motion for a directed verdict.

10 We believe that the predicate sale that they made of a
11 prior art infringement of Omega has not been proven. They had
12 only two witnesses who talked about it at all. One was
13 Mr. Taute, who said he has no recollection at all of what
14 happened; and one was Mr. Cole, who said he made no report, he
15 sent no document, he has no testimony other than a picture. He
16 has a declaration which has been changed twice with respect to
17 that, but he certainly has no evidence to be able to testify
18 about.

19 The final point, even with respect to Mr. Taute, I
20 know your Honor let in the email between Mr. Taute and
21 Mr. Paul, but the disposition of that case, which is the only
22 evidence that we have, the disposition is that somebody was
23 given a disorderly conduct charge and a conditional release and
24 removed from his records.

25 I don't believe that they have satisfied their burden

J2SVOME2

1 of showing the predicate sale.

2 THE COURT: All right. I'm going to reserve.

3 Your case, Mr. Schick, is going to take how long?

4 MR. SCHICK: Your Honor, I have what others here might
5 think is good news. We had two witnesses after you precluded
6 Mr. Paul. I don't think I have to make another motion about
7 that.

8 THE COURT: I think you made your record on that.

9 MR. SCHICK: Correct.

10 We had Mr. Quinonez and Mr. Stone-Jansen.

11 Mr. Quinonez we had decided and told he was not
12 necessary. He was going to testify about the two failed buys
13 in December 2011, and we feel we have that in evidence.

14 With respect to Mr. Stone-Jansen, who has been under
15 subpoena and in communication, he may have taken off with Juror
16 No. 8, because he sent us an email early there morning saying
17 he's not coming. He's the plaintiffs' investigator. He said
18 he's feeling sickly and he's not coming today. And then he
19 said tomorrow, if it's relevant, he has a doctor's appointment
20 or a doctor's procedure.

21 And so we'll have to think about the potential adverse
22 inference. He was under subpoena, he was in communication, and
23 he just sent us an email early this morning right before we --
24 oh, late last night?

25 MR. DELLA FERA: 3:30 a.m.

J2SVOME2

1 MR. SCHICK: 3:30 a.m.

2 THE COURT: He must have really been sick.

3 MR. SCHICK: I don't know, your Honor. He's not our
4 witness. We're calling him as a witness; he's plaintiffs'
5 investigator.

6 MR. GUNTHER: Your Honor, he's not our witness either.
7 They had the subpoena. This notion that they're going to --
8 here we go again with adverse inferences. This witness is not
9 under our control at all.

10 THE COURT: Who is he?

11 MR. GUNTHER: He was an investigator that years ago
12 did some work for the Collen firm.

13 MR. SCHICK: Your Honor he's an investigator who
14 testified at deposition, who submitted a declaration in the
15 first summary judgment before your Honor in this case.

16 THE COURT: Want to use his deposition?

17 MR. SCHICK: We just got this information right before
18 we came to court. We have to think about during the break how
19 we deal with it, that's all I've said.

20 THE COURT: All right.

21 So you may or may not have witnesses this afternoon.

22 MR. SCHICK: I certainly have no live witnesses
23 because I'm not calling Mr. Quinonez, and Mr. Stone-Jansen is
24 not coming.

25 THE COURT: Okay. So you'll let me know at the

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1 luncheon break, after the luncheon break, what your intentions
2 are.

3 MR. SCHICK: Yes, your Honor. Absolutely.

4 THE COURT: Okay. And then depending upon -- then we
5 can take up the jury charge.

6 MR. SCHICK: Correct.

7 THE COURT: How long is your summation going to be,
8 Mr. Gunther?

9 MR. GUNTHER: Your Honor, I think I would plan to do
10 just maybe about 50 minutes and about 10 minutes in rebuttal.

11 THE COURT: Fifty?

12 MR. GUNTHER: Fifty, five-oh minutes, and 10 minutes
13 of rebuttal.

14 THE COURT: Oh.

15 MR. SCHICK: I'm not sure rebuttal is --

16 THE COURT: He's entitled to his rebuttal; he's got
17 the burden.

18 How much for you, Mr. Schick?

19 MR. SCHICK: I was going to say an hour, but now I'm
20 rethinking whether I should give that answer, your Honor. I
21 would assume it's going to be anywhere, you know 45, 50
22 minutes.

23 THE COURT: Okay.

24 We can do that in the morning session.

25 MR. SCHICK: That's what we said.

J2SVOME2

1 If I could raise one other issue just as a
2 housekeeping matter. I don't know the best way to deal with
3 this.

4 Obviously it might be in everybody's interest -- I
5 don't know what your Honor intends in terms of the schedule
6 tomorrow, in terms of keeping to the 2:30 day or beyond that.
7 If your Honor keeps the 2:30 day, I have nothing else to say.
8 If your Honor suggests going beyond that, I just need to figure
9 out how much --

10 THE COURT: You're going to have your summations, an
11 hour each, approximately. That will take care of the morning
12 session.

13 The afternoon session, I'll take a little bit less
14 than an hour for my jury charge. I intend to give it to the
15 jury then. I'd let the jury decide whether they want to go
16 home or stay. So I don't tell them what they -- once they've
17 been charged and begin their deliberations, I let them
18 deliberate in accordance with their own schedule, their own
19 wishes.

20 MR. SCHICK: The problem is, your Honor, that tomorrow
21 is Friday.

22 THE COURT: I understand.

23 MR. SCHICK: And I can't be here and Mr. Laboz can't
24 be here if it goes on, and that's somewhat prejudicial. So I
25 would ask if we say we'll run until 2:30 until now, and now it

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1 runs till 4 or something like that, because otherwise you get
2 into a situation where we're just not present in court and I
3 don't think that's appropriate.

4 I wish it were otherwise, your Honor.

5 THE COURT: Why can't Mr. Della Fera handle it? He's
6 doing a great job.

7 MR. SCHICK: He is. He absolutely is. But Mr. Laboz
8 has the right to be here. And I have -- for better, for worse,
9 they are stuck with me, as the court staff is writing here.
10 And again, I'm not saying that it has to be 2:30, your Honor.
11 I understand the issue is where I'm raising it like this, but I
12 do think it's --

13 (Continued on next page)

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J2sWome3

1 THE COURT: What time do you have to leave?

2 MR. SCHICK: I would say like this. Sabbath begins,
3 like, about 5:20. I want to be out of the courtroom roughly
4 4:15.

5 I understand if the jury reaches a verdict and it
6 comes in and it goes beyond that, it creates an issue, and
7 certainly if the jury comes to a verdict and finds Mr. Schick
8 not here and Mr. Laboz not here, it could be certainly
9 prejudicial. And if an issue comes in on a note, it could be
10 an issue. Again, none of us wanted this to come to a Friday
11 with our case being put on.

12 THE COURT: All right.

13 MR. SCHICK: And I certainly don't want the jury to be
14 told it's us, either.

15 THE COURT: Well, I understand that.

16 MR. SCHICK: I appreciate your Honor's sensitivity. I
17 just wanted to raise it at this point.

18 THE COURT: All right. I'll see you after lunch.

19 (Luncheon recess)
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J2sWome3

1 AFTERNOON SESSION

2 12:15 p.m.

3 THE COURT: Please be seated.

4 Mr. Schick, what have you decided on?

5 MR. SCHICK: We're OK with the evidence as it's come
6 in, Judge.

7 THE COURT: Does that mean you rest?

8 MR. SCHICK: We didn't start yet, so I don't know if
9 we rest, but yes.

10 THE COURT: Do you want to rest in front of the jury?

11 MR. SCHICK: Yes.

12 THE COURT: I'll call on you and you'll have the
13 opportunity to say you rest.

14 MR. SCHICK: Sure.

15 THE COURT: We took an informal poll of the jury.
16 I'll Mr. Gonzalez to report on what the jury told him.

17 THE DEPUTY CLERK: One of the jurors has work
18 obligations tomorrow, so she has to be out of here by 2:30 the
19 latest, and it seems we can come back on Monday, however, we
20 may need to start later in the morning. Other than that,
21 assuming they don't submit a verdict by tomorrow, we can resume
22 on Monday morning, sometime after 10, sometime after 11. I'll
23 find out for sure afterwards.

24 THE COURT: OK.

25 MR. GUNTHER: That's acceptable, and fine.

J2sWome3

1 THE COURT: OK.

2 MR. SCHICK: Yes, your Honor.

3 THE COURT: I'm going to call in the jury, excuse them
4 and tell them we're going to have summations tomorrow and the
5 case will be in their hands by tomorrow afternoon, I assume.

6 MR. SCHICK: 9:00 tomorrow? Same time.

7 THE COURT: Yes.

8 (Jury present)

9 THE COURT: Good afternoon. Please be seated.

10 Mr. Schick.

11 MR. SCHICK: I think Mr. Gunther has not rested in
12 front of the jury. I may be wrong about that.

13 THE COURT: I thought you did rest.

14 MR. GUNTHER: I thought I did, but in case, I didn't,
15 I rest.

16 MR. SCHICK: I, too, rest so we can get on to the next
17 part of this case.

18 THE COURT: That means, as they said in their opening
19 statements, the lawyers will both have the chance to make their
20 closing arguments. We're going to schedule those for tomorrow
21 morning at 9:00. Then I'll give you my instructions, and
22 you'll begin your deliberations. I'm going to excuse you now
23 and ask you to come back tomorrow morning at 9:00, and we'll
24 begin promptly.

25 Remember what I've said. Keep an open mind. Don't

J2sWome3

1 discuss the case, and we'll see you tomorrow morning at 9:00.

2 Thank you very much.

3 (Jury not present)

4 THE COURT: Please be seated.

5 Last night we transmitted to you a proposed jury
6 charge which reflects our work on the charges that you
7 submitted, our consideration of the evidence, and this is what
8 we've come up with.

9 I'd like to go through this page by page, take your
10 objections as we go along. The first 10 or 11 pages deal with
11 general introductory charges, and these are my standard charges
12 that I've been using for all the time that I've been on the
13 bench, so I hope you don't have any issue about 1 through 14.

14 MR. SCHICK: We do not, your Honor.

15 MR. NOYES: No objection, your Honor.

16 THE COURT: Then we'll turn to page 11, the
17 substantive law charges.

18 OK. I'm on page 11.

19 MR. NOYES: No objection from the plaintiffs, your
20 Honor.

21 MR. DELLA FERA: No objection from the defense.

22 THE COURT: 12.

23 MR. NOYES: No objection, your Honor.

24 MR. DELLA FERA: No objection.

25 THE COURT: 13.

J2sWome3

1 MR. NOYES: No objection.

2 MR. DELLA FERA: No objection.

3 THE COURT: When do you have your first objection,
4 Mr. Noyes?

5 MR. NOYES: We have only one objection, your Honor.

6 THE COURT: You get a gold star.

7 MR. NOYES: It is on page 19.

8 THE COURT: OK.

9 MR. NOYES: The last sentence of page 19, the sentence
10 that begins "conversely."

11 THE COURT: Yes.

12 MR. NOYES: Your Honor, the sentence that immediately
13 precedes that is, "If the infringement is serious and
14 widespread, it is more likely that 375 Canal knew about and
15 condoned the acts of its tenants, subtenants or other occupants
16 of its premises." That is language from a jury instruction
17 cited by the defendant. We also cited those jury instructions.
18 We're fine with that language, but the next sentence is a
19 sentence that we don't believe has a basis in those jury
20 instructions or in the law, and our concern with that final
21 sentence is that it suggests that actual knowledge could be
22 negated by a limited infringement.

23 For example, we would contend that 375 Canal LLC had
24 actual knowledge of infringement of Omega's trademarks here
25 even if it was only one watch that was sold, so for that

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1 reason, your Honor, we would object to this particular
2 instruction.

3 THE COURT: Mr. Della Fera.

4 MR. DELLA FERA: Your Honor, the final sentence is
5 merely the converse of the preceding sentence.

6 THE COURT: That's true.

7 MR. DELLA FERA: And I think it's unfair to only give
8 the instruction that seems favorable to plaintiffs and not the
9 instruction that conversely would be more favorable to the
10 defendant.

11 THE COURT: I think that's why it's there. I'm trying
12 to say you can decide things one way or the other, and this is
13 the other. I think it's a fair commentary.

14 MR. DELLA FERA: I have one other comment on that.

15 THE COURT: Do you have any comments before page 19,
16 Mr. Della Fera?

17 MR. DELLA FERA: I do, your Honor.

18 THE COURT: Do you want to take those up?

19 MR. DELLA FERA: I do, if you don't mind. And I
20 apologize.

21 THE COURT: You don't have to apologize.

22 MR. DELLA FERA: I don't believe I'll be getting a
23 gold star, but hopefully a bronze one.

24 Page 16.

25 THE COURT: Yes, sir.

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1 MR. DELLA FERA: Section IV, and it's the third
2 factor.

3 THE COURT: Yes.

4 MR. DELLA FERA: And really, continues on to page 17
5 as well. We believe it should say "whether the defendant
6 continued to lease its premises at 375 Canal Street to one who
7 it knew or had reason to know was infringing on Omega's
8 trademarks," and then continuing on to the end. And the reason
9 we believe that's appropriate, your Honor, is that if they
10 remove the infringer and they continue to lease their premises
11 to someone else, that's completely permissible under the law,
12 and the way this instruction reads is as if they need to shut
13 down the premises completely.

14 THE COURT: Where does it say it has to shut them down
15 completely?

16 MR. DELLA FERA: It doesn't, your Honor.

17 THE COURT: Oh.

18 MR. DELLA FERA: It's an inference. The inference
19 would be that after it knew that its premises were being used
20 as a place to continue infringing Omega's marks, they continued
21 to lease its premises. It needs to be that they continued to
22 lease their premises to the person or entity or group of
23 people. We're not contesting that it needs to be an identified
24 person, but it must be the person about whom they had knowledge
25 or the people about whom they had knowledge, or reason to know.

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1 We acknowledge that, but it needs to be -- can't continue to
2 lease to new tenants.

3 THE COURT: How do you want to change it? What change
4 do you propose?

5 MR. DELLA FERA: I propose adding in the phrase, after
6 the words "375 Canal Street," adding in the phrase "to one who
7 it knew or had reason to know was infringing on Omega's
8 trademarks," or if your Honor prefers one to a group of
9 people -- we're not specifically saying it needs to be a
10 specific person, but that's the change that we would request.

11 THE COURT: Mr. Noyes.

12 MR. NOYES: Your Honor, this is essentially the same
13 request that the defendants have made multiple times. They're
14 trying to inject the requirement that Omega needed to prove the
15 same individual that was infringing the mark and that 375 canal
16 knew it was the same individual and that same individual
17 continued to be at the premises. You've rejected this now
18 twice, your Honor. In 2013, in your decision, for example, you
19 said 375 Canal's argument is that specific notice of
20 counterfeit sales by an identified individual is required
21 before it can be cast into liability, that is not the law.

22 They've argued this multiple times, and you've
23 rejected it. We believe it's the law of the case, and this is
24 improper.

25 MR. DELLA FERA: Your Honor, if I may just respond to

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1 that one point?

2 THE COURT: Yes, please.

3 MR. DELLA FERA: I believe the specific individual,
4 what your Honor was doing, and your Honor can correct me if I'm
5 wrong, is it was that you must identify the individual by
6 name, they must know who it is. We're not contesting that they
7 must know the identity of the individual, but they must have
8 knowledge or reason to know that some person or entity has
9 infringed and then continued to supply their services to that
10 same person or entity. As I stated before, as it reads
11 currently, they could kick that person out, bring someone else
12 in, and this instruction would indicate that that element has
13 still been satisfied.

14 THE COURT: I think it's clear the way it is. I'm
15 going to overrule your objection and leave the language the way
16 it's presented at page 16.

17 What else do you have, Mr. Della Fera?

18 MR. DELLA FERA: Your Honor, factor 4, below that.

19 THE COURT: Yes.

20 MR. DELLA FERA: We believe it's fine but we would add
21 a clause at the end, which is "after it knew of or had reason
22 to know that infringement of Omega's mark had occurred on its
23 premises," and the reason for that is there's no requirement to
24 take remedial steps until there's knowledge.

25 MR. NOYES: Your Honor, that's covered in the factors.

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1 Knowledge is one of the required factors.

2 THE COURT: I think that's right.

3 What's your next one, Mr. Della Fera?

4 MR. DELLA FERA: Page 20, your Honor.

5 THE COURT: OK.

6 MR. DELLA FERA: It's the "as I stated" paragraph
7 under "continued to supply services." And the issue here, your
8 Honor, is that -- it's sort of the same issue, and I think your
9 Honor will probably decide the same way, but we would add "to
10 one who knew or had reason to know" --

11 Your Honor, I will withdraw our objection to 20,
12 "continued to supply services."

13 THE COURT: OK.

14 MR. DELLA FERA: For the remedial steps, however, we
15 believe that it must be that 375 Canal took reasonable remedial
16 steps to try to stop the sale or offer for sale of merchandise
17 infringing on Omega's trademarks. The *Tiffany* case from the
18 Second Circuit is clear that general knowledge of infringement
19 of other brands is insufficient. It needs to be specific to
20 plaintiffs' brand.

21 THE COURT: Are you saying, under remedial steps, 375
22 took remedial steps --

23 MR. DELLA FERA: Yes.

24 THE COURT: -- to stop the sale or offer for sale
25 what?

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1 MR. DELLA FERA: "Of merchandise that infringed on
2 Omega's trademark at 375 Canal Street."

3 THE COURT: Of merchandise.

4 MR. DELLA FERA: "That infringed on Omega's trademarks
5 at 375 Canal Street."

6 THE COURT: That infringed on Omega's mark.

7 MR. DELLA FERA: "At 375 Canal Street."

8 MR. NOYES: Your Honor, we'd just --

9 THE COURT: I'll make that change.

10 Yes, Mr. Noyes.

11 MR. NOYES: That's consistent with your previous
12 instructions that we just discussed. Trademark is the only
13 change that we would make.

14 MR. DELLA FERA: We have no objection.

15 THE COURT: Trademarks.

16 The sale of merchandise that infringed Omega's
17 trademarks at 375 Canal Street.

18 MR. DELLA FERA: That's right.

19 THE COURT: That change is made.

20 MR. DELLA FERA: Thank you, your Honor.

21 I have nothing further in the instructions. We have a
22 few on the special verdict form.

23 THE COURT: OK.

24 MR. DELLA FERA: Our first objection to the special
25 verdict form is to --

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1 THE COURT: Hold on for a second. Be right with you.

2 MR. DELLA FERA: Your Honor, I apologize. I didn't
3 realize the sheet I was reading from was double-sided. I have
4 a few more on the jury charge that were on the back of the
5 page.

6 MR. GUNTHER: I knew it was too good to be true.

7 THE COURT: OK. Go ahead. You took care of the odd
8 numbers.

9 MR. DELLA FERA: That's right, your Honor.

10 THE COURT: Now you're going to do the even numbers.

11 MR. DELLA FERA: That's right. Like this case, your
12 Honor, everything comes in out of order.

13 THE COURT: Yes.

14 MR. DELLA FERA: And I believe we covered these
15 already, so it should be relatively painless.

16 On page 18.

17 THE COURT: Hold on.

18 Page 18. Yes, sir.

19 MR. DELLA FERA: The "actual knowledge" instruction.

20 THE COURT: Right.

21 MR. DELLA FERA: Again, we think that that final
22 clause of "trademark infringing merchandise" should be changed
23 to "merchandise that infringed on Omega's trademarks at 375
24 Canal Street."

25 THE COURT: OK.

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1 MR. DELLA FERA: And similarly, in the next paragraph,
2 which goes on to page 19, for the "reason to know," again, we
3 believe the phrase "trademark infringing merchandise" in both
4 of the places that it is included in this instruction should be
5 "that infringe on Omega's trademarks at 375 Canal Street."

6 THE COURT: OK.

7 MR. NOYES: The only thing, your Honor, with respect
8 to that is that this is discussing willful blindness, and it's
9 hard to understand how you could be willfully blind to specific
10 marks. For that one it's more difficult to add the specific
11 language.

12 MR. DELLA FERA: Your Honor, if that means the willful
13 blindness is not part of the case, that's fine with us, but the
14 standard is clear, it's specific trademark knowledge.

15 THE COURT: I'm going to make the change suggested by
16 Mr. Della Fera and leave it at that.

17 MR. DELLA FERA: And your Honor, on page 21, for the
18 statutory damages, we believe that there should be an
19 additional instruction that, "even if you determine 375 Canal
20 LLC acted willfully, you may still award any amount between
21 1,000 and \$2 million."

22 MR. NOYES: We would object to that, your Honor.

23 THE COURT: What's the basis of the objection? It's
24 clear enough the way it is already? I mean, we're quoting the
25 statute here.

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1 MR. NOYES: Right. We're quoting the statute, and
2 that implies to the jury that they can ignore the law and the
3 evidence.

4 MR. DELLA FERA: Your Honor, it does not imply they
5 can ignore the law. The law is that it can be anywhere between
6 1,000 and \$2 million.

7 MR. SCHICK: The concern here is, your Honor, it reads
8 as if it has to be at least 200,000.

9 MR. DELLA FERA: Yes.

10 Factor 2, "if you find that 375 Canal's conduct was
11 willful, you may award statutory damages up to 2 million." I
12 just think that the jury needs to be aware that the law does
13 allow them to provide as low as 1,000 and up to 2 million.

14 MR. SCHICK: Right. The suggestion is it's 1,000 up
15 to 200,000 if it's not willful and 200,000 to 2 million if it's
16 willful. And I don't even think willful should go to the jury,
17 but in any event, an instruction as Mr. Della Fera suggested
18 would make it absolutely clear what the purview of the jury is.

19 MR. NOYES: Your Honor, this is the language of the
20 statute.

21 THE COURT: Yes.

22 MR. NOYES: It's appropriate.

23 THE COURT: I'm going to leave it the way it is.

24 MR. DELLA FERA: Finally, your Honor, also on page
25 21 -- it's actually on page 22, I believe, in the revised

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1 version, where it states, "There is no necessary mathematical
2 relationship."

3 THE COURT: Yes.

4 MR. DELLA FERA: We acknowledge that that is true,
5 your Honor. However, we think that given -- and again, we
6 haven't offered evidence of actual damages, and Mr. Schick
7 won't offer any argument on that in the closing. We respect
8 your Honor's ruling, but if you look at the factors, the
9 revenues lost by Omega, which is actual damages, is a factor to
10 be included, and we think that, as we cited in our motions *in*
11 *limine*, courts consistently hold that the most relevant factor
12 is actual damages, and so if there's going to be an instruction
13 that there's no necessary mathematical relationship, which is
14 true, I think there should also be an instruction that says:
15 "Statutory damages typically bear some relation to actual
16 damages, where actual damages can be shown. However, there is
17 no necessary mathematical relationship."

18 THE COURT: This language is an extract from the
19 controlling language in the Second Circuit, and I'm not of the
20 mind to amend it along the lines you suggest, Mr. Della Fera,
21 so I'm going to overrule your objection.

22 MR. DELLA FERA: That's all we have for the jury
23 charge, your Honor.

24 THE COURT: OK. Thank you.

25 Now the special verdict form.

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1 MR. NOYES: Your Honor, for the plaintiffs, the only
2 issue we have is with respect to the trademarks that we
3 removed, that we dropped from the case, which is registration
4 No. 577,415.

5 THE COURT: It's removed from the version I have.

6 MR. NOYES: Thank you.

7 THE COURT: I thought we shared that with you.

8 MR. DELLA FERA: I don't think the parties have had
9 the opportunity --

10 MR. NOYES: We haven't seen it.

11 THE COURT: I'm down to four trademarks. They are as
12 follows, just so it's clear: 25036; 578,041; 566,370 and the
13 Seamaster, 556,602.

14 MR. NOYES: That's correct, your Honor.

15 THE COURT: Those are the four I have.

16 Mr. Della Fera.

17 MR. DELLA FERA: Your Honor, on special verdict form,
18 1, 6, and 8, which are all the same charge, we can just talk
19 about one and do the same thing for each of them.

20 THE COURT: Yes.

21 MR. DELLA FERA: We believe that it should just say
22 "watch" for the type of good. The evidence came in that it was
23 discussing only "watch." For instance, watch movements, bands,
24 the watch movement in this case, each of the registration
25 statements for these trademarks indicated that watches and

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1 parts thereof were essentially what the single type of good
2 was, so we think it should be "watch."

3 THE COURT: Watch for all of them?

4 MR. NOYES: Your Honor, we would object to that.
5 There was evidence presented to the jury that a second watch
6 was offered for sale at 375 Canal on May 19, 2012, and the
7 language, I believe, in the charge here comes directly from the
8 trademark registration.

9 MR. DELLA FERA: Your Honor, on that point we have no
10 objection to saying watches. The standard is clear that it's
11 the type of good, so one or two watches makes no difference
12 under the law. Even 2,000 watches, for statutory damages, it's
13 the same, so we have no issue with that. We just think it
14 should be "watches."

15 THE COURT: What's wrong with that, Mr. Noyes?

16 MR. NOYES: That's fine, your Honor. "Watches" is
17 fine.

18 THE COURT: So for Omega registration No. 25036 we'll
19 change watch movements and watch cases.

20 MR. GUNTHER: No, your Honor. On this one, remember,
21 what they're going to argue, if you make that change, is that
22 there was only one watch, therefore, you should check the
23 verdict form in their favor. That's why they're doing that.
24 The reason it's got to be "watch" or "watches" is that if
25 ultimately the jury decides --

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1 THE COURT: "Watch movements or watch cases."

2 MR. GUNTHER: Yes. If ultimately the jury decides
3 that there was only one watch that was sold, I don't want to
4 hear an argument. I think it would be entirely inappropriate
5 for them to say, We win; it was only one watch. And that's
6 what they're trying to do by making this change.

7 MR. DELLA FERA: Your Honor, to be clear, we're fine
8 with "watches," plural.

9 MR. NOYES: That's their big point.

10 MR. SCHICK: They're seeking damages.

11 MR. DELLA FERA: I understand the point now.

12 "Watch or watches" is fine with us, your Honor.

13 MR. GUNTHER: That's what's in there.

14 MR. DELLA FERA: But removing the bracelets, bands,
15 straps, movements, cases, we just think each one --

16 MR. GUNTHER: No, no, no.

17 (Discussion off the record)

18 MR. DELLA FERA: OK. The first trademark's out. It's
19 really just the second one. I apologize. If it's just the
20 second one, your Honor, we think it should say watch or
21 watches. That's fine.

22 THE COURT: Amy, why don't you show them what you
23 have.

24 MR. DELLA FERA: I'm sorry, your Honor.

25 MR. SCHICK: We want to make sure that they don't

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1 argue that there's multiple types of goods on a single watch so
2 they can get damages three times, and that's what they want to
3 argue.

4 MR. GUNTHER: No.

5 THE COURT: We're going to print it.

6 MR. GUNTHER: OK, let's get it printed.

7 MR. DELLA FERA: I think there's less disagreement
8 here, your Honor, than it appears.

9 THE COURT: Is that right?

10 MR. DELLA FERA: I think.

11 MR. GUNTHER: I've got to tell you, I don't think so.

12 MR. DELLA FERA: OK. Move on.

13 MR. SCHICK: We'll reserve on that.

14 MR. DELLA FERA: Your Honor, may I?

15 THE COURT: Yes.

16 MR. DELLA FERA: This clarifies things. It's just for
17 the first trademark, 25036.

18 THE COURT: Yes.

19 MR. DELLA FERA: And we believe it should say watches,
20 like the other ones.

21 MR. NOYES: Your Honor, with respect to that, the
22 trademark in evidence, PX-3, at page 2, it says "a trademark
23 for watch movements and watch cases." We would be OK with
24 changing the first part, "watch movements," to just "watches,"
25 but we need to include "watch cases" as well.

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1 MR. DELLA FERA: Your Honor, I believe the issue here
2 is that a watch case is a part of a watch. I believe that if
3 it's on the watch case it's also on the watch.

4 THE COURT: What terrible deed, Mr. Gunther, is the
5 defendant going to do if we don't say watch movements or watch
6 cases?

7 MR. GUNTHER: Your Honor, here's what I'm worried
8 about. There's trademarks on the back of the watch. We showed
9 that, right? If part of what they're trying to do here is to
10 say --

11 THE COURT: I thought movements were inside of the
12 watch.

13 MR. GUNTHER: The movements I don't care about. It's
14 the cases part, the cases part. If they're going to say the
15 case doesn't count because that's not -- if there's going to be
16 an argument like that --

17 THE COURT: Is there going to be an argument like
18 that? It would be a spurious argument.

19 MR. DELLA FERA: I can represent absolutely not, your
20 Honor. We believe that the watch case is part of the watch.
21 So if it says watches, anything on the watch case would be
22 included.

23 MR. GUNTHER: With that representation, your Honor,
24 I'm good with watches.

25 THE COURT: OK.

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1 MR. DELLA FERA: Your Honor, I have --

2 THE COURT: Wait a minute. Watches.

3 MR. DELLA FERA: I apologize.

4 THE COURT: And I'll make that change in one --

5 MR. DELLA FERA: One, six and eight, your Honor.

6 THE COURT: One, six and eight, yes. Thank you.

7 MR. DELLA FERA: I wasn't wrong. There's less
8 disagreement, your Honor.

9 THE COURT: OK.

10 MR. DELLA FERA: Finally, we have two more objections.
11 I believe I know how your Honor will rule, but I'd like to make
12 a record on them, if I could.

13 THE COURT: OK.

14 MR. DELLA FERA: Special verdict form 4, we believe it
15 should say after the first -- the only reference to 375 Canal
16 Street the phrase should be added "to one who knew or had
17 reason to know it was infringing on Omega's trademarks."

18 MR. NOYES: Your Honor, we object to that for the same
19 reason.

20 THE COURT: I understand.

21 Your prediction was right, Mr. Della Fera. The
22 objection's overruled.

23 MR. DELLA FERA: Thank you, your Honor.

24 On special verdict form No. 5, I'll just make the
25 record that we would request that after the reference to 375

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1 Canal Street it state "after it had knowledge or reason to know
2 of infringement of Omega's marks on its premises."

3 THE COURT: Keep in mind this is a verdict sheet, not
4 an instruction.

5 MR. NOYES: We object to that, your Honor, for the
6 same reason.

7 MR. DELLA FERA: That's all I have, your Honor.

8 THE COURT: All right. We'll make the changes that we
9 said we'd make, and we'll see you tomorrow morning at 9:00.

10 You're going to be an hour.

11 MR. GUNTHER: Your Honor, I would say just short of an
12 hour for the main closing and then about ten minutes' rebuttal.

13 THE COURT: Mr. Schick.

14 MR. SCHICK: I will try to be about 45 to 50, 55
15 minutes, your Honor.

16 THE COURT: OK.

17 MR. GUNTHER: Your Honor, there's one other issue. I
18 know your Honor was detained a little bit this morning. We
19 sent a letter this morning, and this relates to the closing.

20 THE COURT: I got it. I read it at lunchtime.

21 MR. GUNTHER: OK. Your Honor, I think it's really
22 important, given what went on in the opening statement, that
23 there be instructions to counsel about this stuff that has
24 nothing to do with any of the evidence that came in, no empty
25 chairs, no talking about Mr. Paul's setups and things like

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1 that. Your Honor, that is entirely out of bounds, and it's not
2 supported by any of the evidence. And in fact, on the point
3 with respect to we should have sued other people, you put an
4 instruction in because of that. We think all of that stuff is
5 out and should not be permitted in terms of closing argument.

6 THE COURT: Mr. Schick.

7 MR. SCHICK: Yes, your Honor.

8 Mr. Gunther, after getting us precluded from calling
9 Mr. Paul, submitted about 20 documents into evidence to or from
10 Mr. Paul. The fact that he was at the center of this lawsuit,
11 that he decided to do it, is certainly not in dispute. I do
12 not intend tomorrow to make this about Mr. Paul, but I should
13 not be precluded from referencing Mr. Paul or the fact that he
14 was at the center of this.

15 Mr. Cole, their witness; Mr. Taute, their witness, all
16 their factual witnesses, will testify their point of contact
17 was Mr. Paul, so that's on that issue.

18 With respect to those they didn't sue, your Honor has
19 absolutely said he's going to given an instruction that there's
20 no legal necessity for Omega to sue others, those who they
21 think were responsible for the direct infringement. However,
22 Mr. Gunther has also said he's going to talk about the steps
23 that Omega takes to protect its trademark. They had Mr. Foster
24 talk about things he testified later he has never spoken about
25 previously, in all his years of employment, about the Omega

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1 brand, how much effort Omega puts into his brand, even though
2 he didn't know about it until they handed it to him. But your
3 Honor, if they can put in effort about how much they protect
4 their brand and talk about deterrent effect, we can say this is
5 what they did not do.

6 And in addition, your Honor, with respect to those who
7 they didn't call, surely the jury can hear about who they chose
8 to call as witnesses, who they didn't choose to call as
9 witnesses; whose names they tried to get into evidence, whose
10 names they didn't try to get into evidence. There's been a lot
11 of motions *in limine* here which, for the most part, precluded
12 stuff from our case, and we respect that, your Honor. And we
13 did a good, fair trial and go to closing. But we should not be
14 precluded, your Honor, at closing from making the argument.
15 Your Honor's going to instruct the jury, as you have twice
16 before, that what the lawyers say is just what lawyers say and
17 what counts is what they think the facts are and what your
18 Honor says the law is. But we should not be precluded, your
19 Honor.

20 MR. GUNTHER: Your Honor, what we're talking about is
21 scurrilous stuff: Mr. Paul set up this case, he set up 375
22 Canal.

23 THE COURT: That he was the mastermind; set out to set
24 the landlord up.

25 MR. GUNTHER: Yes, your Honor.

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1 THE COURT: Saw a payday.

2 MR. GUNTHER: Right.

3 THE COURT: Smelled a windfall.

4 MR. GUNTHER: Right.

5 THE COURT: Mr. Schick, I must tell you --

6 MR. GUNTHER: Your Honor, that's outrageous.

7 THE COURT: I don't know if it's outrageous, but it
8 was over the top.

9 MR. SCHICK: You have my word, your Honor.

10 THE COURT: I ask you not to do it.

11 MR. SCHICK: I will not be over the top tomorrow. He
12 certainly initiated this, but I understand what your Honor's
13 saying. And trust me, your Honor, I do not want to get an
14 objection sustained or a direction from your Honor in front of
15 the jury in closing tomorrow.

16 THE COURT: I'm most reluctant to interrupt lawyers in
17 the summations, because I know how important it is, but on
18 this, Mr. Schick, I want to warn you that I will exercise my
19 prerogatives. I caution you to limit yourself to the material
20 that's in evidence. There's nothing in here about Mr. Paul
21 being a mastermind or that he was out to set the landlord up.
22 There's nothing about that at all.

23 MR. DELLA FERA: Your Honor, if I may?

24 Setting up the landlord, we agree there's nothing in
25 evidence, and we wouldn't make those arguments.

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1 THE COURT: Really, if Mr. Schick wants to promise,
2 Mr. Della Fera, then I'm afraid that an instruction that gives
3 you some discretion on this may not be --

4 MR. GUNTHER: Your Honor, that's exactly right. He
5 will. What he did in the opening, now I think it was
6 outrageous, your Honor, but let me tell you something. If he's
7 not shut down on this, I can guarantee you he's going to make
8 me stand up, and I shouldn't have to do that in closing.

9 MR. SCHICK: Your Honor, that's not true and it's not
10 fair. We didn't interrupt them in opening. Mr. Noyes got up
11 there and said Mr. Laboz personally profited from the
12 infringing activity of trademarks. They put up pictures of
13 buildings. They clearly have a goal to inflame the jury about
14 the wealth of the Labozes. 50 buildings with them showing a
15 development project.

16 Your Honor, we understand your instruction. We
17 understand. You didn't let us call Mr. Paul to testify. After
18 they precluded us, they put in 20 documents. I've heard you,
19 your Honor. I'm not going to say he was the mastermind or he
20 set up. I've heard you, your Honor.

21 THE COURT: What are you going to say about Mr. Paul?

22 MR. SCHICK: Listen, your Honor, I have not --
23 contrary to the team in front, I have not -- you know, I don't
24 have a whole army back in the office doing other things as this
25 case goes on.

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1 Obviously, the fact that -- you know, I can't tell you
2 precisely what I'm going to say. Mr. Paul -- your Honor, I
3 hear your instruction. Mr. Paul is on every document that's
4 relevant that they submitted, your Honor. I'm not going to say
5 this is his payday or this is his thing. I've heard you, your
6 Honor, but a preclusion, you know -- they wanted to call him as
7 a witness. They lost the motion in limine. Then they said we
8 shouldn't be able to. After they said we shouldn't be able to
9 because he's not relevant, they put in 20 documents from him.
10 We obviously couldn't question him. We're not going to go past
11 the bounds you've said, your Honor, but it truly would be
12 unfair, and really, your Honor, they pushed the bounds so many
13 places here. They talked about damages.

14 THE COURT: You are running a substantial risk now,
15 Mr. Schick, of transgressing what my instructions are. If you
16 want to take that risk, you can, but I'm not going to be
17 hesitant about interrupting you and cautioning you to confine
18 yourself to the facts of the case.

19 MR. SCHICK: Understood, your Honor.

20 THE COURT: The same goes for the retailers,
21 manufacturers and distributors of counterfeit merchandise.
22 There's no requirement in the lawsuit for infringement that the
23 retailers, the manufacturers or the distributor be sued. This
24 is a contributory trademark infringement case, and plaintiffs
25 can sue whoever they want. The question is do they meet the

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1 standards for contributory infringement, and that's what we're
2 going to stick with.

3 MR. DELLA FERA: Your Honor, if I may, just on that
4 point?

5 THE COURT: Yes.

6 MR. DELLA FERA: The plaintiffs are going to put on
7 evidence that the Labozes and 375 Canal were required to hang
8 up signs, were required to hire investigators. We saw that
9 today with the direct of Mr. Laboz. That's also not required,
10 though we agree, it's relevant. And I think similarly, as Mr.
11 Schick stated, the efforts to protect their trademarks is
12 relevant to this case. We would absolutely honor your Honor's
13 ruling about bringing up the claims that they made or did not
14 bring up in this case, but efforts to figure out, to make a
15 factual inquiry into who was doing those acts is directly
16 relevant to evidence that they put on as a rebuttal of the
17 efforts they take to protect their trademark.

18 MR. GUNTHER: Your Honor, you said it. This is a case
19 about contributory infringement. Everything else is
20 irrelevant. They want to make it about something else. Every
21 time, they want to point to somebody else, point the finger at
22 somebody else. We've got to stick to the evidence in this case
23 and they don't want to, and they should be precluded.

24 MR. SCHICK: Your Honor, I don't have to add to what
25 Mr. Della Fera said on that precise point, but how is the

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1 evidence in the case about 50 buildings that the Laboz brothers
2 have, wherever they have it, other than to inflame the jury?
3 This is a direct point on the information they chose to gather
4 during the investigation that they chose to provide, your
5 Honor.

6 I must be able to say they didn't provide names to the
7 defendants. There was lots of testimony about that, that they
8 did not provide names to the defendants or anything like that.
9 We cannot be precluded from saying what they themselves did not
10 gather here. Whether they sued them is not a necessary
11 component of proving their claim, but surely in terms of what
12 the jury knows or doesn't know and the suppositions they're
13 supposed to make, the fact that they didn't gather certain
14 information is clearly relevant.

15 THE COURT: OK. I'm going to adhere to the ruling.
16 I've updated my jury charge at page 13: "Any suggestion that
17 there is a defense here available to 375 Canal because Omega
18 did not pursue distributors and manufacturers and retailers is
19 not appropriate for summation."

20 I direct you not to do it.

21 MR. SCHICK: Your Honor, does it go to damages? Not a
22 retail. Does it go to damages? How can it be that they can
23 put on the fact that Laboz, all this information, I cannot talk
24 about who they didn't call as witnesses, who they didn't gather
25 information from?

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1 Clearly, your Honor, the fact that when they sent Mr.
2 Laboz the letter on September 20, 2011, and they did not
3 include the name of the supposed --

4 THE COURT: Tell me this. Mr. Rahman, for example --

5 MR. SCHICK: Yes.

6 THE COURT: -- why are you going into Mr. Rahman? Why
7 before Swatch can sue you for contributory infringement do they
8 have to sue Mr. Rahman?

9 MR. SCHICK: I didn't say they have to sue Mr. Rahman.
10 I want to be very clear to your Honor.

11 THE COURT: Why do they have to do anything with Mr.
12 Rahman?

13 MR. SCHICK: Your Honor, if they gave his name to us,
14 if they found out who he is, it is so clearly relevant to how
15 he can follow up on protecting the trademark. They had the
16 name. They could have called him as a witness here. There's
17 an address on the form that Mr. Taute introduced yesterday,
18 although it's unclear, clearly, whether it's 81 Mott Street or
19 375 Canal. The fact that they take no efforts to find and
20 locate these people.

21 They put up, your Honor -- it's like a Zapruder film.
22 They circle the guy who's sitting there, and want the jury to
23 believe that it's Mr. Rahman. Right? That's exactly what they
24 want to do. They want to say Mr. Rahman was there on December
25 7, 2010, and they want to say Mr. Rahman was there on May 19,

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1 2012. And your Honor, there's a document that they think shows
2 that Mr. Rahman was there on December 7 with an address in New
3 York. They didn't bother to get him. They didn't give us the
4 name Rahman in the complaint letter. We have to be able to
5 talk about that, not about not filing lawsuits necessarily
6 about the general efforts they took here. It's relevant, your
7 Honor. Please, it would not be fair to preclude defendants at
8 this point.

9 MR. GUNTHER: What he wants to do is stand up and say
10 we should have done other things. We should have gone and
11 found Mr. Rahman and played whack-a-mole with all the people
12 that have been going in and out of 375 Canal Street over the
13 past 20 years and go after all of those people. We chose to do
14 a contributory infringement case. That's what this case is
15 about. That's what these facts are about, and argument to that
16 effect is improper. Your Honor is correct. What you just read
17 into the record is absolutely correct, and he should not be
18 permitted to do it.

19 MR. SCHICK: Your Honor, one final point.

20 They are going to put up on the screen that video from
21 May 19, 2012, and they're going to suggest to the jury that's
22 Mr. Rahman, without any predicate for it. And I have to be
23 able to talk to the jury about the deficiencies in their
24 evidence on that point. They want to say it's the same --

25 THE COURT: What's the deficiency in the evidence?

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1 Rahman is irrelevant to this.

2 MR. GUNTHER: I won't say the word "Rahman" in my
3 closing.

4 MR. SCHICK: Will you say same seller? Will you say
5 it's the same seller? Will you say it's the same person? Will
6 you say it's the same person who was there December 7, 2010,
7 and was there on May 19, 2012?

8 MR. GUNTHER: Your Honor --

9 THE COURT: OK. I've heard enough now, and time is
10 getting short.

11 MR. SCHICK: On this point, then 228 is out, correct?
12 It's an exhibit that they have with Mr. Rahman's name.

13 MR. GUNTHER: No.

14 MR. SCHICK: It has to be out.

15 MR. GUNTHER: Your Honor, you made a ruling. He just
16 keeps trying to chip away at it.

17 MR. SCHICK: And the ruling is that he said he's not
18 going to include anything with Mr. Rahman's name. That
19 document, 228, is what they fought to get in yesterday.

20 MR. GUNTHER: Please.

21 THE COURT: I've heard enough now.

22 MR. GUNTHER: Thank you.

23 THE COURT: Retailers, manufacturers and distributors
24 are not necessary to bring a case for contributory
25 infringement, and so I don't want any kind of reference in the

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1 closing arguments to people who are not here. That takes care
2 of the second objection that was made by Mr. Gunther.

3 MR. GUNTHER: Thank you, your Honor.

4 THE COURT: The third objection, the empty chair
5 argument is pretty much the same as retailers, manufacturers
6 and distributors, in paragraph 2, so it's the same ruling.

7 MR. GUNTHER: Thank you, your Honor.

8 MR. SCHICK: Your Honor, we just note our objection to
9 the record.

10 THE COURT: You have your objection, Mr. Schick.

11 MR. SCHICK: And we will object during closing if
12 Exhibit 228 comes in, which is the one they had with
13 Mr. Rahman's name, and Mr. Gunther is not willing to say he's
14 not using it. He can stop this right now.

15 THE COURT: If you object on that basis, I'm going to
16 tell you don't interrupt while we're having summations.

17 MR. SCHICK: So he can use an exhibit with
18 Mr. Rahman's name, but I can't say that they didn't do any
19 other efforts to identify him? How could that be? They don't
20 get to use the exhibit, your Honor. He said he's not going to
21 reference Mr. Rahman.

22 THE COURT: Then what's your argument if he's not
23 going to reference Mr. Rahman?

24 MR. SCHICK: Because he's not willing to take out the
25 exhibit.

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1 THE COURT: All right. I've made my rulings.

2 Thank you. See you at 9:00 tomorrow.

3 MR. GUNTHER: Thank you, your Honor.

4 (Adjourned to March 1, 2019, at 9:00 a.m.)

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